CHAPTER 14 Federal System

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the national government and the regional governments. By definition, a unitary government is one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government. A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently. Britain, France, Japan, China, Italy, Norway, Sweden and so on have a unitary model of government while the US, Switzerland, Australia, Canada, Russia, Brazil, Argentina and so on have a federal model of government. In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.

The specific features of the federal and unitary governments are mentioned in a comparative manner in Table 14.1.

The term 'federation' is drived from a Latin word *foedus* which means 'treaty' or 'agreement'. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units. The units of a federation are known by various names like states (as in US) or cantons (as in Switzerland) or provinces (as in Canada) or republics (as in Russia).

A federation can be formed in two ways, that is, by way of integration or by way of disintegration. In the first case, a number of

Table 14.1 Comparing Features of Federal and Unitary Governments

Federal Government	Unitary Government
1. Dual Government (that is, national government and regional government)	1. Single government, that is, the national government which may create regional governments
2. Written Constitution	2. Constitution may be written (France) or unwritten (Britain)
3. Division of powers between the national and regional government	3. No division of powers. All powers are vested in the national government
4. Supremacy of the Constitution	4. Constitution may be supreme (Japan) or may not be supreme (Britain)
5. Rigid Constitution	5. Constitution may be rigid (France) or flexible (Britain)
6. Independent judiciary	6. Judiciary may be independent or may not be independent
7. Bicameral legislature	7. Legislature may be bicameral (Britain) or unicameral (China)

militarily weak or economically backward states (independent) come together to form a big and a strong union, as for example, the US. In the second case, a big unitary state is converted into a federation by granting autonomy to the provinces to promote regional interest (for example, Canada). The US is the first and the oldest federation in the world. It was formed in 1787 following the American Revolution (1775–83). It comprises 50 states (originally 13 states) and is taken as the model of federation. The Canadian Federation, comprising 10 provinces (originally 4 provinces) is also quite old—formed in 1867.

The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons—the large size of the country and its socio-cultural diversity. They realised that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.

However, the term 'federation' has no where been used in the Constitution. Instead, Article 1 of the Constitution describes India as a 'Union of States'. According to Dr. B.R. Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' to indicate two things: **(i)** the Indian federation is not the result of an agreement among the states like the American federation; and **(ii)** the states have no right to secede from the federation. The federation is a union because it is indestructible.[1]

The Indian federal system is based on the 'Canadian model' and not on the 'American model'. The 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre. The Indian federation resembles the Candian federation **(i)** in its formation (i.e., by way of disintegration); **(ii)** in its preference to the term 'Union' (the Canadian federation is also called a 'Union'); and **(iii)** in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

[1]*Constituent Assembly Debates*, Volume VII, p. 43.

FEDERAL FEATURES OF THE CONSTITUTION

The federal features of the Constitution of India are explained below:

1. Dual Polity

The Constitution establishes a dual polity consisting of the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with matters of national importance like defence, foreign affairs, currency, communication and so on. The state governments, on the other hand, look after matters of regional and local importance like public order, agriculture, health, local government and so on.

2. Written Constitution

The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.[2] At present, it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules.[3] It specifies the structure, organisation, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

3. Division of Powers

The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in

[2]The American Constitution originally consisted of 7 Articles only, the Australian 128 and the Canadian 147.

[3]The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 95 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9,10,11 and 12).

the Seventh Schedule. The Union List consists of 98 subjects (originally 97), the State List 59 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (ie, which are not mentioned in any of the three lists) are given to the Centre.

4. Supremacy of the Constitution

The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must conform to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

5. Rigid Constitution

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre-state relations and judicial organisation) can be amended only by the joint action of the Central and state governments. Such provisions require for their amendment a special majority[4] of the Parliament and also an approval of half of the state legislatures.

6. Independent Judiciary

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.

7. Bicameralism

The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

UNITARY FEATURES OF THE CONSTITUTION

Besides the above federal features, the Indian Constitution also possesses the following unitary or non-federal features:

1. Strong Centre

The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the US, they are vested in the states. Thus, the Constitution has made the Centre very strong.

2. States Not Indestructible

Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the

[4] A majority of two-thirds of the members of each House present and voting and a majority of the total membership of each House.

Indian Federation is "an indestructible Union of destructible states". The American Federation, on the other hand, is described as "an indestructible Union of indestructible states".

3. Single Constitution

Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard was the case of erstwhile Jammu and Kashmir which had its own (state) Constitution.[5]

4. Flexibility of the Constitution

The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.

5. No Equality of State Representation

The states are given representation in the Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

6. Emergency Provisions

The Constitution stipulates three types of emergencies—national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.

7. Single Citizenship

In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country. The other federal states like US and Australia have dual citizenship, that is, national citizenship as well as state citizenship.

8. Integrated Judiciary

The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.

9. All-India Services

In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFoS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.

10. Integrated Audit Machinery

The Comptroller and Auditor-General of India audits the accounts of not only the Central government but also those of the states. But,

[5]Till 2019, the erstwhile state of Jammu and Kashmir enjoyed a special status by virtue of Article 370 of the Constitution of India.

his/her appointment and removal is done by the President without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.

11. Parliament's Authority Over State List

Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if the Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.

12. Appointment of Governor

The governor, who is the head of the state, is appointed by the President. He/she holds office during the pleasure of the President. He/she also acts as an agent of the Centre. Through him/her, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.

13. Integrated Election Machinery

The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But, this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.

14. Veto Over State Bills

The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.

CRITICAL EVALUATION OF THE FEDERAL SYSTEM

From the above, it is clear that the Constitution of India has deviated from the traditional federal systems like US, Switzerland and Australia and incorporated a large number of unitary or non-federal features, tilting the balance of power in favour of the Centre. This has prompted the Constitutional experts to challenge the federal character of the Indian Constitution. Thus, KC Wheare described the Constitution of India as "quasi-federal". He remarked that "Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features."[6]

According to K Santhanam, the two factors have been responsible for increasing the unitary bias (tendency of centralisation) of the Constitution. These are: **(i)** the dominance of the Centre in the financial sphere and the dependence of the states upon the Central grants; and **(ii)** the emergence of a powerful erstwhile planning commission which controlled the developmental process in the states[6a]. He observed: "India has practically functioned as a unitary state though the Union and the states have tried to function formally and legally as a federation."[7]

However, there are other political scientists who do not agree with the above descriptions. Thus, Paul Appleby[8] characterises the Indian

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[6]K.C. Wheare: *Federal Government*, 1951, p. 28.

[6a]In 2015, the Planning Commission was replaced by a new body called the NITI Aayog (National Institution for Transforming India).

[7]K. Santhanam: *Union-State Relations in India*, 1960, pp. 50–70.

[8]Paul Appleby: *Public Administration in India*, 1953, p. 51.

system as "extremely federal". Morris Jones[9] termed it as a "bargaining federalism". Ivor Jennings[10] has described it as a "federation with a strong centralising tendency". He observed that "the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth". Alexandrowicz[11] stated that "India is a case *sui generis* (i.e., unique in character). Granville Austin[12] called the Indian federalism as a "cooperative federalism". He said that though the Constitution of India has created a strong Central government, it has not made the state governments weak and has not reduced them to the level of administrative agencies for the execution of policies of the Central government. He described the Indian federation as "a new kind of federation to meet India's peculiar needs".

On the nature of the Indian Constitution, Dr. B.R. Ambedkar made the following observation in the Constituent Assembly: "The Constitution is a Federal Constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, nor are the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the Constitution, both derive their respective authority from the Constitution."[13] He further observed: "Yet the Constitution avoids the tight mould of federalism and could be both unitary as well as federal according to the requirements of time and circumstances".[14] While replying to the criticism of over-centralisation in the Constitution, he stated: "A serious complaint is made on the ground that there is too much centralisation and the states have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relations between the Centre and the states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the states not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The states are in no way dependent upon the Centre for their legislative or executive authority. The states and the Centre are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It is, therefore, wrong to say that the states have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary".[15]

In the *Bommai* case[16] (1994), the Supreme Court laid down that the Constitution is federal and characterised federalism as its 'basic feature'. It observed: "The fact that under the scheme of our Constitution, greater power is conferred upon the Centre *vis-a-vis* the states does not mean that the states are mere appendages of the Centre. The states have an independent constitutional existence. They are not satellites or agents of the Centre. Within the sphere allotted to them, the states are supreme. The fact that during emergency and in certain other eventualities their powers are overridden or invaded by the Centre is not destructive of the essential federal feature of the Constitution. They are exceptions and the exceptions are not a rule. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle—the outcome of our own process and a recognition of the ground realities".

[9]Morris Jones: *The Government and Politics in India*, 1960, p. 14.

[10]Ivor Jennings: *Some Characteristics of the Indian Constitution*, 1953, p. 1.

[11]C.H. Alexandrowicz: *Constitutional Development in India*, 1957, pp. 157–70.

[12]Granville Austin: *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, pp. 186–88.

[13]*Constituent Assembly Debates*, Vol. VIII, p. 33.

[14]*Ibid*, Vol. VII, pp. 33–34.

[15]Dr. B.R. Ambedkar's speech in the Constituent Assembly on 25.11.1949 reproduced in *The Constitution and the Constituent Assembly*; Lok Sabha Secretariat, 1990, p. 176.

[16]*S.R. Bommai* vs. *Union of India* (1994).

In fact, the federalism in India represents a compromise between the following two conflicting considerations[17]:

(i) normal division of powers under which states enjoy autonomy within their own spheres; and

(ii) need for national integrity and a strong Union government under exceptional circumstances.

The following trends in the working of Indian political system reflects its federal spirit: **(i)** Territorial disputes between states, for example, between Maharashtra and Karnataka over Belgaum; **(ii)** Disputes between states over sharing of river water, for example, between Karnataka and Tamil Nadu over Cauvery water; **(iii)** The emergence of regional parties and their coming to power in states like Andhra Pradesh, Tamil Nadu, etc.; **(iv)** The creation of new states to fulfil the regional aspirations, for example, Mizoram or Jharkhand or Telangana; **(v)** Demand of the states for more financial grants from the Centre to meet their developmental needs; **(vi)** Assertion of autonomy by the states and their resistance to the interference from the Centre; **(vii)** Supreme Court's imposition of several procedural limitations on the use of Article 356 (President's Rule in the States) by the Centre.[18]

[17] Subash C. Kashyap: *Our Parliament*, National Book Trust, 1999 Edition, p. 40.

[18] *S.R. Bommai* vs. *Union of India* (1994).

CHAPTER 15 Centre–State Relations

The Constitution of India, being federal in structure, divides all powers (legislative, executive and financial) between the Centre and the states. However, there is no division of judicial power as the Constitution has established an integrated judicial system to enforce both the Central laws as well as state laws.

Though the Centre and the states are supreme in their respective fields, the maximum harmony and coordination between them is essential for the effective operation of the federal system. Hence, the Constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states.

The Centre-state relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations.

LEGISLATIVE RELATIONS

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states. Besides these, there are some other articles dealing with the same subject.

Like any other Federal Constitution, the Indian Constitution also divides the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation. Further, the Constitution provides for the parliamentary legislation in the state field under five extraordinary situations as well as the centre's control over state legislation in certain cases. Thus, there are four aspects in the Centre-states legislative relations, viz.,

- Territorial extent of Central and state legislation;
- Distribution of legislative subjects;
- Parliamentary legislation in the state field; and
- Centre's control over state legislation.

1. Territorial Extent of Central and State Legislation

The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states in the following way:

(i) The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories, and any other area for the time being included in the territory of India.

(ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.

(iii) The Parliament alone can make 'extra-territorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

However, the Constitution places certain restrictions on the plenary territorial jurisdiction of the Parliament. In other words, the

laws of Parliament are not applicable in the following areas:

(i) The President can make regulations for the peace, progress and good government of the Union Territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu and Ladakh. In the case of Puducherry also, the President can legislate by making regulations but only when the Assembly is suspended or dissolved. A regulation so made has the same force and effect as an act of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.

(ii) The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.

(iii) The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

2. Distribution of Legislative Subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule:

(i) The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 98 subjects (originally 97[1] subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.

(ii) The state legislature has "in normal circumstances" exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 59 subjects (originally 66[2] subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.

(iii) Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (originally 47[3] subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.

(iv) The Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state even though that matter is one which is enumerated in the State List. This provision has reference to the Union Territories or the Acquired Territories (if any).

(v) The 101st Amendment Act of 2016 has made a special provision with respect to goods and services tax. Accordingly,

[1] Even now, the last entry is numbered as 97 but the total number of entries is 98. The entries numbered as 2A, 92A and 92B have been added and entries 33, 92 and 92C have been omitted.

[2] Even now, the last entry is numbered as 66 but the total number of entries is 59. The entries numbered as 11, 19, 20, 29, 36, 52 and 55 have been omitted.

[3] Even now, the last entry is numbered as 47 but the total number of entries is 52. The entries numbered as 11A, 17A, 17B, 20A and 33A have been added.

the Parliament and the state legislature have power to make laws with respect to goods and services tax imposed by the Union or by the State. Further, the parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of inter-state trade or commerce.

(vi) The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.

From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.

In US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration—Federal and Provincial, and the residuary powers are vested in the Centre.

The Government of India Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the Governor-General of India. In this respect, India follows the Canadian precedent.

The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.

In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the Central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the President and has received his/her assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

3. Parliamentary Legislation in the State Field

The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

A. When Rajya Sabha Passes a Resolution If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws with respect to goods and services tax[3a] or a matter in the State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force.

[3a]The provision for goods and services tax was added by the 101st Amendment Act of 2016.

This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.

B. During a National Emergency The Parliament acquires the power to legislate with respect to goods and services tax[3b] or matters in the State List, while a proclamation of national emergency is in operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate.

Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.

C. When States Make a Request When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states.

The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.

Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.

D. To Implement International Agreements The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfil its international obligations and commitments.

Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS.

E. During President's Rule When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the president's rule. This means that the period for which such a law remains in force is not coterminous with the duration of the President's rule. But, such a law can be repealed or altered or re-enacted by the state legislature.

4. Centre's Control Over State Legislation

Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways:

(i) The Governor can reserve a bill passed by the state legislature for the consideration of the President. It must be noted here that the President enjoys absolute veto over such a bill (Articles 200 and 201).

(ii) A state bill imposing restrictions on the freedom of trade, commerce and intercourse with that state or within that state can be introduced in the legislature of the state only with the previous sanction of the President (Article 304).

[3b] *Ibid.*

(iii) The Centre can direct the states to reserve money bills and other financial bills passed by the state legislature for the President's consideration during a financial emergency (Article 360).

(iv) The Governor cannot make an ordinance without the instructions from the President in certain cases (Article 213).

From the above, it is clear that the Constitution has assigned a position of superiority to the Centre in the legislative sphere. In this context, the Sarkaria Commission on Centre–State Relations (1983–88) observed: "The rule of federal supremacy is a technique to avoid absurdity, resolve conflict and ensure harmony between the Union and state laws. If this principle of union supremacy is excluded, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union–state concern will be stymied. The federal principle of unity in diversity will be very much a casualty. This rule of federal supremacy, therefore, is indispensable for the successful functioning of the federal system".[4]

ADMINISTRATIVE RELATIONS

Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states. In addition, there are various other articles pertaining to the same matter.

1. Distribution of Executive Powers

The executive power has been divided between the Centre and the states on the lines of the distribution of legislative powers, except in few cases. Thus, the executive power of the Centre extends to the whole of India: (i) to the matters on which the Parliament has exclusive power of legislation (i.e., the subjects enumerated in the Union List); and (ii) to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement. Similarly, the executive power of a state extends to its territory in respect of matters on which the state legislature has exclusive power of legislation (i.e., the subjects enumerated in the State List).

In respect of matters on which both the Parliament and the state legislatures have power of legislation (i.e., the subjects enumerated in the Concurrent List), the executive power rests with the states except when a Constitutional provision or a parliamentary law specifically confers it on the Centre. Therefore, a law on a concurrent subject, though enacted by the Parliament, is to be executed by the states except when the Constitution or the Parliament has directed otherwise.[5]

2. Obligation of States and the Centre

The Constitution has placed two restrictions on the executive power of the states in order to give ample scope to the Centre for exercising its executive power in an unrestricted manner. Thus, the executive power of every state is to be exercised in such a way (a) as to ensure compliance with the laws made by the Parliament and any existing law which apply in the state; and (b) as not to impede or prejudice the exercise of executive power of the Centre in the state. While the former lays down a general obligation upon the state, the latter imposes a specific obligation on the state not to hamper the executive power of the Centre.

In both the cases, the executive power of the Centre extends to giving of such directions to the state as are necessary for the purpose. The sanction behind these directions of the Centre is coercive in nature. Thus, Article 365 says that where any state has failed to

[4]Report of the Commission on centre-state Relations, Part I (Government of India, 1988) pp. 28–29.

[5]For example, under the Essential Commodities Act, made by the Parliament on a concurrent subject, the executive power is vested in the Centre.

comply with (or to give effect to) any directions given by the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. It means that, in such a situation, the President's rule can be imposed in the state under Article 356.

3. Centre's Directions to the States

In addition to the above two cases, the Centre is empowered to give directions to the states with regard to the exercise of their executive power in the following matters:

(i) the construction and maintenance of means of communication (declared to be of national or military importance) by the state;
(ii) the measures to be taken for the protection of the railways within the state;
(iii) the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and
(iv) the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state.

The coercive sanction behind the Central directions under Article 365 (mentioned above) is also applicable in these cases.

4. Mutual Delegation of Functions

The distribution of legislative powers between the Centre and the states is rigid. Consequently, the Centre cannot delegate its legislative powers to the states and a single state cannot request the Parliament to make a law on a state subject. The distribution of executive power in general follows the distribution of legislative powers. But, such a rigid division in the executive sphere may lead to occasional conflicts between the two. Hence, the Constitution provides for inter-government delegation of executive functions in order to mitigate rigidity and avoid a situation of deadlock.

Accordingly, the President may, with the consent of the state government, entrust to that government any of the executive functions of the Centre. Conversely, the governor of a state may, with the consent of the Central government, entrust to that government any of the executive functions of the state.[6] This mutual delegation of administrative functions may be conditional or unconditional.

The Constitution also makes a provision for the entrustment of the executive functions of the Centre to a state without the consent of that state. But, in this case, the delegation is by the Parliament and not by the president. Thus, a law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorise the conferring of powers and imposition of duties by the Centre upon a state (irrespective of the consent of the state concerned). Notably, the same thing cannot be done by the state legislature.

From the above, it is clear that the mutual delegation of functions between the Centre and the state can take place either under an agreement or by a legislation. While the Centre can use both the methods, a state can use only the first method.

5. Cooperation Between the Centre and States

The Constitution contains the following provisions to secure cooperation and coordination between the Centre and the states:

(i) The Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.
(ii) The President can establish (under Article 263) an Inter-State Council to investigate and discuss subject of common interest between the Centre and the states. Such a council was set up in 1990.

[6]This provision (the power of the states to entrust functions to the Centre) was added by the 7th Constitutional Amendment Act of 1956. Before that, only the Centre had the power.

(iii) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state.

(iv) The Parliament can appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to the interstate freedom of trade, commerce and intercourse. But, no such authority has been appointed so far.

6. | All-India Services

Like in any other federation, the Centre and the states also have their separate public services called as the Central Services and the State Services respectively. In addition, there are All-India Services—IAS, IPS and IFoS. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns. But, they are recruited and trained by the Centre.

These services are controlled jointly by the Centre and the states. The ultimate control lies with the Central government while the immediate control vests with the state governments.

In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services. In 1966, the Indian Forest Service (IFoS) was created as the third All-India Service. Article 312 of the Constitution authorises the Parliament to create new All-India Services on the basis of a Rajya Sabha resolution to that effect.

Each of these three All-India Services, irrespective of their division among different states, form a single service with common rights and status and uniform scales of pay throughout the country.

Though the All-India Services violate the principle of federalism under the Constitution by restricting the autonomy and patronage of the states, they are supported on the ground that **(i)** they help in maintaining high standard of administration in the Centre as well as in the states; **(ii)** they help to ensure uniformity of the administrative system throughout the country; and **(iii)** they facilitate liaison, cooperation, coordination and joint action on the issues of common interest between the Centre and the states.

While justifying the institution of all-India services in the Constituent Assembly, Dr. B.R. Ambedkar observed that: "The dual polity which is inherent in a federal system is followed in all federations by a dual service. In all federations, there is a Federal Civil Service and a State Civil Service. The Indian federation, though a dual polity, will have a dual service, but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to the strategic posts. The Constitution provides that without depriving the states of their rights to form their own civil services, there shall be an all-India service, recruited on an all-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to those strategic posts throughout the Union".[7]

7. | Public Service Commissions

In the field of public service commissions, the Centre-state relations are as follows:

(i) The Chairman and members of a state public service commission, though appointed by the governor of the state, can be removed only by the President.

(ii) The Parliament can establish a Joint State Public Service Commission (JSPSC) for two or more states on the request of the state legislatures concerned. The chairman and members of the JSPSC are appointed by the President.

(iii) The Union Public Service Commission (UPSC) can serve the needs of a state on the request of the state governor and with the approval of the President.

[7] *Constituent Assembly Debates*, Volume VII, pp. 41-42.

(iv) The UPSC assists the states (when requested by two or more states) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

8. Integrated Judicial System

Though India has a dual polity, there is no dual system of administration of justice. The Constitution, on the other hand, established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. This is done to eliminate diversities in the remedial procedure.

The judges of a state high court are appointed by the President in consultation with the Chief Justice of India and the governor of the state. They can also be transferred and removed by the President.

The Parliament can establish a common high court for two or more states. For example, Maharashtra and Goa or Punjab and Haryana have a common high court.

9. Relations During Emergencies

(i) During the operation of a national emergency (under Article 352), the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

(ii) When the President's Rule is imposed in a state (under Article 356), the President can assume to himself/herself the functions of the state government and powers vested in the Governor or any other executive authority in the state.

(iii) During the operation of a financial emergency (under Article 360), the Centre can direct the states to observe canons of financial propriety and can give other necessary directions including the reduction of salaries of persons serving in the state.

10. Other Provisions

The Constitution contains the following other provisions which enable the Centre to exercise control over the state administration:

(i) Article 355 imposes two duties on the Centre: **(a)** to protect every state against external aggression and internal disturbance; and **(b)** to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.

(ii) The governor of a state is appointed by the President. He/she holds office during the pleasure of the President. In addition to the Constitutional head of the state, the governor acts as an agent of the Centre in the state. He/she submits periodical reports to the Centre about the administrative affairs of the state.

(iii) The state election commissioner, though appointed by the governor of the state, can be removed only by the President.

11. Extra-Constitutional Devices

In addition to the above-mentioned constitutional devices, there are extra-constitutional devices to promote cooperation and coordination between the Centre and the states. These include a number of advisory bodies and conferences held at the Central level.

The non-constitutional advisory bodies include the NITI Ayog (which succeeded the planning commission), the National Integration Council, the Central Council of Health and Family Welfare, the Central Council of Local Government, the Zonal Councils, the North-Eastern Council, the Central Council of Indian Medicine, the Central Council of Homoeopathy, the Transport Development Council, the University Grants Commission and so on.

The important conferences held either annually or otherwise to facilitate Centre-state consultation on a wide range of matters are as follows: **(i)** The governors' conference (presided over by the President). **(ii)** The chief ministers' conference (presided over by the prime minister). **(iii)** The chief

secretaries' conference (presided over by the cabinet secretary). **(iv)** The conference of inspector-general of police. **(v)** The chief justices' conference (presided over by the chief justice of India). **(vi)** The conference of vice-chancellors. **(vii)** The home ministers' conference (presided over by the Central home minister). **(viii)** The law ministers' conference (presided over by the Central law minister).

FINANCIAL RELATIONS

Articles 268 to 293 in Part XII of the Constitution deal with Centre-state financial relations. Besides these, there are other provisions dealing with the same subject. These together can be studied under the following heads:

1. Allocation of Taxing Powers

The Constitution divides the taxing powers between the Centre and the states in the following way:

- The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List (which are 13 in number[8]).
- The state legislature has exclusive power to levy taxes on subjects enumerated in the State List (which are 18 in number[9]).
- There are no tax entries in the Concurrent List. In other words, the concurrent jurisdiction is not available with respect to tax legislation. But, the 101st Amendment Act of 2016 has made an exception by making a special provision with respect to goods and services tax. This Amendment has conferred concurrent power upon the Parliament and State Legislatures to make laws governing goods and services tax[10].
- The residuary power of taxation (that is, the power to impose taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax and expenditure tax.

The Constitution also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied and collected. For example, the income-tax is levied and collected by the Centre but its proceeds are distributed between the Centre and the states.

Further, the Constitution has placed the following restrictions on the taxing powers of the states:

(i) A state legislature can impose taxes on professions, trades, callings and employments. But, the total amount of such taxes payable by any person should not exceed ₹2,500 per annum.[11]

(ii) A state legislature is prohibited from imposing a tax on the supply of goods or services or both in the following two cases: **(a)** where such supply takes place outside the state; and **(b)** where such supply takes place in the course of import or export. Further, the Parliament is empowered to formulate the principles for determining when a supply of goods or services or both takes place outside the state, or in the course of import or export[12].

(iii) A state legislature can impose tax on the consumption or sale of electricity. But, no tax can be imposed on the consumption or sale of electricity which is **(a)** consumed by the Centre or sold to the Centre; or **(b)** consumed in the construction, maintenance or operation of any railway by the Centre or by the concerned railway company or sold to the Centre or the railway company for the same purpose.

(iv) A state legislature can impose a tax in respect of any water or electricity stored, generated, consumed, distributed or

[8]Entries—82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92A, 92B and 96.

[9]Entries—45, 46, 47, 48, 49, 50, 51, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63 and 66.

[10]In this regard, the 101st Amendment Act of 2016 inserted Article 246-A in the Constitution.

[11]Originally, this limit was only ₹250 per annum. The 60th Amendment Act of 1988 raised it to ₹2,500 per annum.

[12]These provisions are contained in Article 286, as amended by the 101st Amendment Act of 2016.

sold by any authority established by Parliament for regulating or developing any inter-state river or river valley. But, such a law, to be effective, should be reserved for the president's consideration and receive his/her assent.

2. Distribution of Tax Revenues

The 80th Amendment Act of 2000 and the 101st Amendment Act of 2016 have introduced major changes in the scheme of the distribution of tax revenues between the centre and the states.

The 80th Amendment was enacted to give effect to the recommendations of the 10th Finance Commission. The Commission recommended that out of the total income obtained from certain central taxes and duties, 29% should go to the states. This is known as the 'Alternative Scheme of Devolution' and came into effect retrospectively from April 1, 1996. This amendment has brought several central taxes and duties like Corporation Tax and Customs Duties at par with Income Tax (taxes on income other than agricultural income) as far as their constitutionally mandated sharing with the states is concerned.[13]

The 101st Amendment has paved the way for the introduction of a new tax regime (i.e., goods and services tax – GST) in the country. Accordingly, the Amendment conferred concurrent taxing powers upon the Parliament and the State Legislatures to make laws for levying GST on every transaction of supply of goods or services or both. The GST replaced a number of indirect taxes levied by the Union and the State Governments and is intended to remove the cascading effect of taxes and provide for a common national market for goods and services. The Amendment provided for subsuming of various central indirect taxes and levies such as **(i)** Central Excise Duty, **(ii)** Additional Excise Duties, **(iii)** Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, **(iv)** Service Tax, **(v)** Additional Customs Duty commonly known as Countervailing Duty, **(vi)** Special Additional Duty of Customs, and **(vii)** Central Surcharges and Cesses so far as they related to the supply of goods and services. Similarly, the Amendment provided for subsuming of **(i)** State Value Added Tax / Sales Tax, **(ii)** Entertainment Tax (other than the tax levied by the local bodies), **(iii)** Central Sales Tax (levied by the Centre and collected by the States), **(iv)** Octroi and Entry Tax, **(v)** Purchase Tax, **(vi)** Luxury Tax, **(vii)** Taxes on lottery, betting and gambling, and **(viii)** State Surcharges and Cesses in so far as they related to the supply of goods and services. Further, the Amendment deleted Article 268-A as well as Entry 92-C in the Union List, both were dealing with service tax. They were added earlier by the 88th Amendment Act of 2003. The service tax was levied by the Centre but collected and appropriated by both the Centre and the States.

After the above two amendments (i.e., 80th Amendment and 101st Amendment), the present position with respect to the distribution of tax revenues between the centre and the states is as follows:

A. Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268): This category includes the stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.

The proceeds of these duties levied within any state do not form a part of the Consolidated Fund of India, but are assigned to that state.

B. Taxes Levied and Collected by the Centre but Assigned to the States (Article 269): The following taxes fall under this category:

(i) Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce.

(ii) Taxes on the consignment of goods in the course of inter-state trade or commerce.

The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in

[13] This amendment deleted Article 272 (Taxes which are levied and collected by the Centre and may be distributed between the Centre and the states).

accordance with the principles laid down by the Parliament.

C. Levy and Collection of Goods and Services Tax in Course of Inter-State Trade or Commerce (Article 269-A): The Goods and Services Tax (GST) on supplies in the course of inter-state trade or commerce are levied and collected by the Centre. But, this tax is divided between the Centre and the States in the manner provided by Parliament on the recommendations of the GST Council. Further, the Parliament is also authorized to formulate the principles for determining the place of supply, and when a supply of goods or services or both takes place in the course of inter-state trade or commerce.

D. Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270): This category includes all taxes and duties referred to in the Union List except the following:

(i) Duties and taxes referred to in Articles 268, 269 and 269-A (mentioned above);
(ii) Surcharge on taxes and duties referred to in Article 271 (mentioned below); and
(iii) Any cess levied for specific purposes.

The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

E. Surcharge on Certain Taxes and Duties for Purposes of the Centre (Article 271): The Parliament can at any time levy the surcharges on taxes and duties referred to in Articles 269 and 270 (mentioned above). The proceeds of such surcharges go to the Centre exclusively. In other words, the states have no share in these surcharges.

However, the Goods and Services Tax (GST) is exempted from this surcharge. In other words, this surcharge can not be imposed on the GST.

F. Taxes Levied and Collected and Retained by the States: These are the taxes belonging to the states exclusively. They are enumerated in the state list and are 18 in number. These are[14]: **(i)** land revenue; **(ii)** taxes on agricultural income; **(iii)** duties in respect of succession to agricultural land; **(iv)** estate duty in respect of agricultural land; **(v)** taxes on lands and buildings; **(vi)** taxes on mineral rights; **(vii)** Duties of excise on alcoholic liquors for human consumption; opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or narcotics; **(viii)** taxes on the consumption or sale or electricity; **(ix)** taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-state trade or commerce or sale in the course of international trade or commerce of such goods; **(x)** taxes on goods and passengers carried by road or inland waterways; **(xi)** taxes on vehicles; **(xii)** taxes on animals and boats; **(xiii)** tolls; **(xiv)** taxes on professions, trades, callings and employments; **(xv)** capitation taxes; **(xvi)** taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council; **(xvii)** stamp duty on documents (except those specified in the Union List); and **(xviii)** fees on the matters enumerated in the State List (except court fees).

3. Distribution of Non-tax Revenues

A. The Centre The receipts from the following form the major sources of non-tax revenues of the Centre: **(i)** posts and telegraphs; **(ii)** railways; **(iii)** banking; **(iv)** broadcasting **(v)** coinage and currency; **(vi)** central public sector enterprises; **(vii)** escheat and lapse; and **(viii)** others.

[14]Entry 52 (taxes on the entry of goods into a local area for consumption, use or sale therein) and entry 55 (taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television) were omitted by the 101st Amendment Act of 2016.

B. The States The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprises; (v) escheat and lapse; and (vi) others.

4. | Grants-in-Aid to the States

Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

A. Statutory Grants Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state. Also, different sums may be fixed for different states. These sums are charged on the Consolidated Fund of India every year.

Apart from this general provision, the Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam.

The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission.

B. Discretionary Grants Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to the states.

"These grants are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion. These grants have a two-fold purpose: to help the state financially to fulfil plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan."[15]

[15]M.P. Jain: *Indian Constitutional Law*, Wadhwa, Fourth Edition, pp. 342–43.

C. Other Grants The Constitution also provided for a third type of grants-in-aid, but for a temporary period. Thus, a provision was made for grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa and West Bengal. These grants were to be given for a period of ten years from the commencement of the Constitution. These sums were charged on the Consolidated Fund of India and were made to the states on the recommendation of the Finance Commission.

5. | Goods and Services Tax Council

The smooth and efficient administration of the goods and services tax (GST) requires a co-operation and co-ordination between the Centre and the States. In order to facilitate this consultation process, the 101st Amendment Act of 2016 provided for the establishment of a Goods and Services Tax Council or the GST Council.

Article 279-A empowered the President to constitute a GST Council by an order[16]. The Council is a joint forum of the Centre and the States. It is required to make recommendations to the Centre and the States on the following matters:

(a) The taxes, cesses and surcharges levied by the Centre, the States and the local bodies that would get merged in GST.
(b) The goods and services that may be subjected to GST or exempted from GST.
(c) Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce and the principles that govern the place of supply.
(d) The threshold limit of turnover below which goods and services may be exempted from GST.

[16]Article 279-A(1) says that the President shall, within sixty days from the commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(e) The rates including floor rates with bands of GST.

(f) Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.

6. Finance Commission

Article 280 provides for a Finance Commission as a quasi-judicial body. It is constituted by the President every fifth year or even earlier. It is required to make recommendations to the President on the following matters:

- The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states, the respective shares of such proceeds.
- The principles which should govern the grants-in-aid to the states by the Centre (i.e., out of the Consolidated Fund of India).
- The measures needed to augment the Consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the State Finance Commission.[17]
- Any other matter referred to it by the President in the interests of sound finance.

Till 1960, the Commission also suggested the amounts paid to the States of Assam, Bihar, Orissa and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products.

The Constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India.

7. Protection of the States' Interest

To protect the interest of states in the financial matters, the Constitution lays down that the following bills can be introduced in the Parliament only on the recommendation of the President:

- A bill which imposes or varies any tax or duty in which states are interested;
- A bill which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income tax;
- A bill which affects the principles on which moneys are or may be distributable to states; and
- A bill which imposes any surcharge on any specified tax or duty for the purpose of the Centre.

The expression "tax or duty in which states are interested" means: **(a)** a tax or duty the whole or part of the net proceeds whereof are assigned to any state; or **(b)** a tax or duty by reference to the net proceeds whereof sums are for the time being payable, out of the Consolidated Fund of India to any state.

The phrase 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection. The net proceeds of a tax or a duty in any area is to be ascertained and certified by the Comptroller and Auditor-General of India. His/her certificate is final.

8. Borrowing by the Centre and the States

The Constitution makes the following provisions with regard to the borrowing powers of the Centre and the states:

- The Central government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament.
- Similarly, a state government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state.
- The Central government can make loans to any state or give guarantees in

[17] This function was added by the 73rd and 74th Amendment Acts of 1992 which have granted constitutional status on the panchayats and the municipalities respectively.

respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.

- A state cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.

9. | Inter-Governmental Tax Immunities

Like any other federal Constitution, the Indian Constitution also contain the rule of 'immunity from mutual taxation' and makes the following provisions in this regard:

A. Exemption of Central Property from State Taxation The property of Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats and so on. But, the Parliament is empowered to remove this ban. The word 'property' includes lands, buildings, chattels, shares, debts, everything that has a money value, and every kind of property—movable or immovable and tangible or intangible. Further, the property may be used for sovereign (like armed forces) or commercial purposes.

The corporations or the companies created by the Central government are not immune from state taxation or local taxation. The reason is that a corporation or a company is a separate legal entity.

B. Exemption of State Property or Income from Central Taxation The property and income of a state is exempted from Central taxation. Such income may be derived from sovereign functions or commercial functions. But the Centre can tax the commercial operations of a state if Parliament so provides. However, the Parliament can declare any particular trade or business as incidental to the ordinary functions of the government and it would then not be taxable.

Notably, the property and income of local authorities situated within a state are not exempted from the Central taxation. Similarly, the property or income of corporations and companies owned by a state can be taxed by the Centre.

The Supreme Court, in an advisory opinion[18] (1963), held that the immunity granted to a state in respect of Central taxation does not extend to the duties of customs or duties of excise. In other words, the Centre can impose customs duty on goods imported or exported by a state, or an excise duty on goods produced or manufactured by a state.

10. | Effects of Emergencies

The Centre-state financial relations in normal times (described above) undergo changes during emergencies. These are as follows:

A. National Emergency While the proclamation of national emergency (under Article 352) is in operation, the President can modify the constitutional distribution of revenues between the Centre and the states. This means that the President can either reduce or cancel the transfer of finances (both tax sharing and grants-in-aid) from the Centre to the states. Such modification continues till the end of the financial year in which the emergency ceases to operate.

B. Financial Emergency While the proclamation of financial emergency (under Article 360) is in operation, the Centre can give directions to the states: **(i)** to observe the specified canons of financial propriety; **(ii)** to reduce the salaries and allowances of all class of persons serving in the state; and **(iii)** to reserve all money bills and other financial bills for the consideration of the President.

TRENDS IN CENTRE–STATE RELATIONS

Till 1967, the centre-state relations by and large were smooth due to one-party rule

[18] In Re. Sea Customs Act (1963).

at the Centre and in most of the states. In 1967 elections, the Congress party was defeated in nine states and its position at the Centre became weak. This changed political scenario heralded a new era in the Centre-state relations. The non-Congress Governments in the states opposed the increasing centralisation and intervention of the Central government. They raised the issue of state autonomy and demanded more powers and financial resources to the states. This caused tensions and conflicts in Centre-state relations.

Tension Areas in Centre-State Relations

The issues which created tensions and conflicts between the Centre and states are:

(1) Mode of appointment and dismissal of governor;
(2) Discriminatory and partisan role of governors;
(3) Imposition of President's Rule for partisan interests;
(4) Deployment of Central forces in the states to maintain law and order;
(5) Reservation of state bills for the consideration of the President;
(6) Discrimination in financial allocations to the states;
(7) Role of Planning Commission in approving state projects; (till its replacement by the NITI Aayog in 2015);
(8) Management of All-India Services (IAS, IPS, and IFoS);
(9) Use of electronic media for political purposes;
(10) Appointment of enquiry commissions against the chief ministers;
(11) Sharing of finances (between Centre and states);
(12) Encroachment by the Centre on the State List;
(13) Implementation of the Centrally sponsored schemes by the states; and
(14) Modus operandi of the central agencies like CBI, ED and so on.

The issues in Centre-State relations have been under consideration since the mid 1960s. In this direction, the following developments have taken place:

Administrative Reforms Commission

The Central government appointed a six-member First Administrative Reforms Commission (ARC) of India in 1966 under the chairmanship of Morarji Desai (followed by K Hanumanthayya). Its terms of references included, among others, the examination of Centre-State relations. In order to examine thoroughly the various issues in Centre-state relations, the ARC constituted a study team under M.C. Setalvad. On the basis of the report of this study team, the ARC finalised its own report and submitted it to the Central government in 1969. It made 22 recommendations for improving the Centre-state relations. The important recommendations are:

- Establishment of an Inter-State Council under Article 263 of the Constitution.
- Appointment of persons having long experience in public life and administration and non-partisan attitude as governors.
- Delegation of powers to the maximum extent to the states.
- Transferring of more financial resources to the states to reduce their dependency upon the Centre.
- Deployment of Central armed forces in the states either on their request or otherwise.

No action was taken by the Central government on the recommendations of the ARC.

Rajamannar Committee

In 1969, the Tamil Nadu Government (DMK) appointed a three-member committee under the chairmanship of Dr. P.V. Rajamannar to examine the entire question of Centre-state relations and to suggest amendments to the Constitution so as to secure utmost autonomy to the states.[19] The committee submitted its report to the Tamil Nadu Government in 1971.

[19]The other two members of the committee were Dr. Lakshmanswamy Mudaliar and P.C. Chandra Reddy.

The Committee identified the reasons for the prevailing unitary trends (tendencies of centralisation) in the country. They include: **(i)** certain provisions in the Constitution which confer special powers on the Centre; **(ii)** one-party rule both at the Centre and in the states; **(iii)** inadequacy of states' fiscal resources and consequent dependence on the Centre for financial assistance; and **(iv)** the institution of Central planning and the role of the Planning Commission.

The important recommendations of the committee are as follows: **(i)** An Inter-State Council should be set up immediately; **(ii)** Finance Commission should be made a permanent body; **(iii)** Planning Commission should be disbanded and its place should be taken by a statutory body; **(iv)** Articles 356, 357 and 365 (dealing with President's Rule) should be totally omitted; **(v)** The provision that the state ministry holds office during the pleasure of the governor should be omitted; **(vi)** Certain subjects of the Union List and the Concurrent List should be transferred to the State List; **(vii)** the residuary powers should be allocated to the states; and **(viii)** All-India services (IAS, IPS and IFoS) should be abolished.

The Central government completely ignored the recommendations of the Rajamannar Committee.

Anandpur Sahib Resolution

In 1973, the Akali Dal adopted a resolution containing both political and religious demands in a meeting held at Anandpur Sahib in Punjab. The resolution, generally known as Anandpur Sahib Resolution, demanded that the Centre's jurisdiction should be restricted only to defence, foreign affairs, communications, and currency and the entire residuary powers should be vested in the states. It stated that the Constitution should be made federal in the real sense and should ensure equal authority and representation to all the states at the Centre.

West Bengal Memorandum

In 1977, the West Bengal Government (led by the Communists) published a memorandum on Centre–state relations and sent it to the Central government. The memorandum *inter alia* suggested the following: **(i)** The word 'union' in the Constitution should be replaced by the word 'federal'; **(ii)** The jurisdiction of the Centre should be confined to defence, foreign affairs, currency, communications and economic co-ordination; **(iii)** All other subjects including the residuary should be vested in the states; **(iv)** Articles 356 and 357 (President's Rule) and 360 (financial emergency) should be repealed; **(v)** State's consent should be made obligatory for formation of new states or reorganisation of existing states; **(vi)** Of the total revenue raised by the Centre from all sources, 75 per cent should be allocated to the states; **(vii)** Rajya Sabha should have equal powers with that of the Lok Sabha; and **(viii)** There should be only Central and state services and the All-India Services should be abolished.

The Central government did not accept the demands made in the memorandum.

Sarkaria Commission

In 1983, the Central government appointed a three-member Commission on Centre–state relations under the chairmanship of R.S. Sarkaria, a retired judge of the Supreme Court.[20] The commission was asked to examine and review the working of existing arrangements between the Centre and states in all spheres and recommend appropriate changes and measures. It submitted it's report in 1988.

The Commission did not favour structural changes and regarded the existing constitutional arrangements and principles relating to the institutions basically sound. But, it emphasised on the need for changes in the functional or operational aspects. It observed that federalism is more a functional

[20] B. Sivaraman and S.R. Sen were two other members of the Commission.

arrangement for co-operative action than a static institutional concept. It outrightly rejected the demand for curtailing the powers of the Centre and stated that a strong Centre is essential to safeguard the national unity and integrity which is being threatened by the fissiparous tendencies in the body politic. However, it did not equate strong Centre with centralisation of powers. It observed that over-centralisation leads to blood pressure at the centre and anaemia at the periphery.

The Commission made 247 recommendations to improve Centre–state relations. The important recommendations are mentioned below:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
2. Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.
3. The institution of All-India Services should be further strengthened and more of such services should be created.
4. The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.
5. When the President withholds his/her assent to the state bills, the reasons should be communicated to the state government.
6. The National Development Council (NDC) should be renamed and reconstituted as the National Economic and Development Council (NEDC).
7. The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.
8. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.
9. The Centre should consult the states before making a law on a subject of the Concurrent List.
10. The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself.
11. The net proceeds of the corporation tax may be made permissibly shareable with the states.
12. The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly.
13. The governor's term of five years in a state should not be disturbed except for some extremely compelling reasons.
14. No commission of enquiry should be set up against a state minister unless a demand is made by the Parliament.
15. The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.
16. The present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue.
17. Steps should be taken to uniformly implement the three language formula in its true spirit.
18. No autonomy for radio and television but decentralisation in their operations.
19. No change in the role of Rajya Sabha and Centre's power to reorganise the states.
20. The commissioner for linguistic minorities should be activated.

The Central government has implemented 180 (out of 247) recommendations of the Sarkaria Commission. The most important is the establishment of the Inter-State Council in 1990.

Punchhi Commission

The Second commission on Centre-State Relations was set-up by the Government of India in 2007 under the Chairmanship of Madan Mohan Punchhi, former Chief Justice of India.[21] It was required to look into the

[21]The other four Members of the Commission were Dhirendra Singh (Former Secretary to the Government of India), Vinod Kumar Duggal (Former Secretary to the Government of India), Prof. N.R.

issues of Centre-State relations keeping in view the sea-changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.

The Commission submitted its report to the government in 2010. In finalising the 1,456 page report, in seven volumes, the Commission took extensive help from the Sarkaria Commission report, the National Commission to Review the Working of the Constitution (NCRWC) report and the Second Administrative Reforms Commission report. However, in a number of areas, the Commission report differed from the Sarkaria Commission recommendations.

After examining at length the issues raised in its Terms of Reference and the related aspects in all their hues and shades, the Commission came to the conclusion that 'cooperative federalism' will be the key for sustaining India's unity, integrity and social and economic development in future. The principles of cooperative federalism thus may have to act as a practical guide for Indian polity and governance.

In all, the Commission made over 310 recommendations, touching upon several significant areas in the working of Centre-state relations. The important recommendations are mentioned below:

1. To facilitate effective implementation of the laws on List III subjects, it is necessary that some broad agreement is reached between the Union and states before introducing legislation in Parliament on matters in the Concurrent List.
2. The Union should be extremely restrained in asserting Parliamentary supremacy in matters assigned to the states. Greater flexibility to states in relation to subjects in the State List and "transferred items" in the Concurrent List is the key for better Centre-state relations.
3. The Union should occupy only that many of subjects in concurrent or overlapping jurisdiction which are absolutely necessary to achieve uniformity of policy in demonstrable national interest.
4. There should be a continuing auditing role for the Inter-state Council in the management of matters in concurrent or overlapping jurisdiction.
5. The period of six months prescribed in Article 201 for State Legislature to act when the bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a state bill reserved for consideration of the President.
6. Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers.
7. Financial obligations and its implications on state finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time.
8. While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit:
   - (i) He/she should be eminent in some walk of life
   - (ii) He/she should be a person from outside the state
   - (iii) He/she should be a detached figure and not too intimately connected with the local politics of the state
   - (iv) He/she should be a person who has not taken too great a part in

Madhava Menon (Former Director, National Judicial Academy, Bhopal and National Law School of India, Bangalore) and Dr. Amaresh Bagchi (Emeritus Professor, National Institute of Public Finance and Policy, New Delhi). With the passing away of Dr. Bagchi in February 2008, Vijay Shanker (Former Director, Central Bureau of Investigation, Government of India) was appointed in his place as a Member of the Commission in October 2008.

politics generally and particularly in the recent past

9. Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.
10. The procedure laid down for impeachment of President, *mutatis mutandis* can be made applicable for impeachment of Governors as well.
11. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his/her Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his/her choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.
12. In respect of bills passed by the Legislative Assembly of a state, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.
13. On the question of Governor's role in appointment of Chief Minister in the case of an hung assembly, it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions. These guidelines may be as follows:
    (i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
    (ii) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
    (iii) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated here.
        (a) The group of parties which had pre-poll alliance commanding the largest number
        (b) The largest single party staking a claim to form the government with the support of others
        (c) A post-electoral coalition with all partners joining the government
        (d) A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside
14. On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his/her majority on the floor of the House for which he/she should prescribe a time limit.
15. The Governor should have the right to sanction for prosecution of a state minister against the advice of the Council of Ministers, if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material.
16. The convention of Governors acting as Chancellors of Universities and holding other statutory positions should be done away with. His/her role should be confined to the Constitutional provisions only.
17. When an external aggression or internal disturbance paralyses the state administration creating a situation of a potential break down of the Constitutional machinery of the state, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Article 356 should be limited strictly to rectifying a "failure of the Constitutional machinery in the state".
18. On the question of invoking Article 356 in case of failure of Constitutional machinery in states, suitable amendments are required to incorporate the guidelines set forth in the landmark judgement

of the Supreme Court in *S.R. Bommai* case[22] (1994). This would remove possible misgivings in this regard on the part of states and help in smoothening Centre-state relations.

19. Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of "last resort", and the duty of the Union to protect states under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for "localised emergency" would ensure that the state government can continue to function and the Assembly would not have to be dissolved while providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I and Entry 1 of List II of the Seventh Schedule.
20. Suitable amendments to Article 263 are required to make the Inter-State Council a credible, powerful and fair mechanism for management of inter-state and Centre-state differences.
21. The Zonal Councils should meet at least twice a year with an agenda proposed by states concerned to maximise co-ordination and promote harmonisation of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.
22. The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-state co-ordination on fiscal matters. There is need to institutionalise similar models in other sectors as well. A forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to co-ordinate policies of sectors like energy, food, education, environment and health.
23. New all-India services in sectors like health, education, engineering and judiciary should be created.
24. Factors inhibiting the composition and functioning of the Second Chamber as a representative forum of states should be removed or modified even if it requires amendment of the Constitutional provisions. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the friction points which emerge between Centre and states in fiscal, legislative and administrative relations.
25. A balance of power between states *inter se* is desirable and this is possible by equality of representation in the Rajya Sabha. This requires amendment of the relevant provisions to give equality of seats to states in the Rajya Sabha, irrespective of their population size.
26. The scope of devolution of powers to local bodies to act as institutions of self-government should be constitutionally defined through appropriate amendments.
27. All future Central legislations involving states' involvement should provide for cost sharing as in the case of the RTE Act. Existing Central legislations where the states are entrusted with the responsibility of implementation should be suitably amended providing for sharing of costs by the Central Government.
28. The royalty rates on major minerals should be revised at least every three years without any delay. States should be properly compensated for any delay in the revision of royalty beyond three years.
29. The current ceiling on profession tax should be completely done away with by a Constitutional amendment.
30. The scope for raising more revenue from the taxes mentioned in article 268 should be examined afresh. This issue may

[22] *S.R. Bommai* vs. *Union of India* (1994).

be either referred to the next Finance Commission or an expert committee be appointed to look into the matter.

31. To bring greater accountability, all fiscal legislations should provide for an annual assessment by an independent body and the reports of these bodies should be laid in both Houses of Parliament/state legislature.
32. Considerations specified in the Terms of Reference (ToR) of the Finance Commission should be even handed as between the Centre and the states. There should be an effective mechanism to involve the states in the finalisation of the ToR of the Finance Commissions.
33. The Central Government should review all the existing cesses and surcharges with a view to bringing down their share in the gross tax revenue.
34. Because of the close linkages between the plan and non-plan expenditure, an expert committee may be appointed to look into the issue of distinction between the plan and non-plan expenditure.
35. There should be much better coordination between the Finance Commission and the Planning Commission. The synchronisation of the periods covered by the Finance Commission and the Five-Year Plan will considerably improve such coordination.
36. The Finance Commission division in the Ministry of Finance should be converted into a full-fledged department, serving as the permanent secretariat for the Finance Commissions.
37. The Planning Commission has a crucial role in the current situation. But its role should be that of coordination rather that of micro managing sectoral plans of the Central ministries and the states.
38. Steps should be taken for the setting up of an Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-I. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should be final and binding on all states as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.

The recommendations contained in the Report of the Punchhi Commission have been considered by the Standing Committee of the Inter-State Council in its meetings held in 2017 and 2018. The recommendations of the Commission along with the recommendations of the Standing Committee thereon, have been circulated to the state governments for comments[23].

[23] Annual Report 2021-22, Ministry of Home Affairs, Government of India, p. 246.

Table 15.1 Articles Related to Centre-State Legislative Relations at a Glance

Article No.	Subject Matter
245.	Extent of laws made by Parliament and by the legislatures of states
246.	Subject-matter of laws made by Parliament and by the legislatures of states
246A.	Special provision with respect to goods and services tax
247.	Power of Parliament to provide for the establishment of certain additional courts
248.	Residuary powers of legislation
249.	Power of Parliament to legislate with respect to a matter in the state list in the national interest
250.	Power of Parliament to legislate with respect to any matter in the state list if a Proclamation of Emergency is in operation

Article No.	Subject Matter
251.	Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the legislatures of states
252.	Power of Parliament to legislate for two or more states by consent and adoption of such legislation by any other state
253.	Legislation for giving effect to international agreements
254.	Inconsistency between laws made by Parliament and laws made by the legislatures of states
255.	Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only

Table 15.2 Articles Related to Centre-State Administrative Relations at a Glance

Article No.	Subject Matter
256.	Obligation of states and the Union
257.	Control of the Union over states in certain cases
257A.	Assistance to states by deployment of armed forces or other forces of the Union (Repealed)
258.	Power of the Union to confer powers, etc., on states in certain cases
258A.	Power of the states to entrust functions to the Union
259.	Armed Forces in states in Part B of the First Schedule (Repealed)
260.	Jurisdiction of the Union in relation to territories outside India
261.	Public acts, records and judicial proceedings
262.	Adjudication of disputes relating to waters of inter-state rivers or river valleys
263.	Provisions with respect to an inter-state Council

Table 15.3 Articles Related to Centre-State Financial Relations at a Glance

Article No.	Subject Matter
	Distribution of Revenues between the Union and the States
268.	Duties levied by the Union but collected and appropriated by the states
268A.	Service tax levied by the Union and collected and appropriated by the Union and the states (Repealed)
269.	Taxes levied and collected by the Union but assigned to the states
269A.	Levy and collection of goods and services tax in course of inter-state trade or commerce
270.	Taxes levied and distributed between the Union and the states
271.	Surcharge on certain duties and taxes for purposes of the Union
272.	Taxes which are levied and collected by the Union and may be distributed between the Union and the states (Repealed)
273.	Grants in *lieu* of export duty on jute and jute products
274.	Prior recommendation of the President required to bills affecting taxation in which states are interested
275.	Grants from the Union to certain states

(Contd.)

Article No.	Subject Matter
276.	Taxes on professions, trades, callings and employments
277.	Savings
278.	Agreement with states in Part B of the First Schedule with regard to certain financial matters (Repealed)
279.	Calculation of "net proceeds", etc.
279A.	Goods and Services Tax Council
280.	Finance Commission
281.	Recommendations of the Finance Commission
	Miscellaneous Financial Provisions
282.	Expenditure defrayable by the Union or a state out of its revenues
283.	Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts
284.	Custody of suitors' deposits and other moneys received by public servants and courts
285.	Exemption of property of the Union from state taxation
286.	Restrictions as to imposition of tax on the sale or purchase of goods
287.	Exemption from taxes on electricity
288.	Exemption from taxation by states in respect of water or electricity in certain cases
289.	Exemption of property and income of a state from Union taxation
290.	Adjustment in respect of certain expenses and pensions
290A.	Annual payment to certain Devaswom Funds
291.	Privy purse sums of Rulers (Repealed)
	Borrowing
292.	Borrowing by the Government of India
293.	Borrowing by states

CHAPTER 16 Inter-State Relations

The successful functioning of the Indian federal system depends not only on the harmonious relations and close cooperation between the Centre and the states but also between the states *inter se*. Hence, the Constitution makes the following provisions with regard to inter-state comity:

1. Adjudication of inter-state water disputes.
2. Coordination through inter-state councils.
3. Mutual recognition of public acts, records and judicial proceedings.
4. Freedom of inter-state trade, commerce and intercourse.

In addition, the zonal councils have been established by the Parliament to promote inter-state cooperation and coordination.[1]

INTER-STATE WATER DISPUTES

Article 262 of the Constitution provides for the adjudication of inter-state water disputes. It makes two provisions:

(i) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.

(ii) Parliament may also provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.

Under this provision, the Parliament has enacted two laws [the River Boards Act (1956) and the Inter-State River Water Disputes Act (1956)]. The River Boards Act provides for the establishment of river boards for the regulation and development of inter-state river and river valleys. A river board is established by the Central government on the request of the state governments concerned to advise them.

The Inter-State River Water Disputes Act empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley. The decision of the tribunal would be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.

So far, the Central government has set up several inter-state water dispute tribunals. The name of the tribunals, the years in which they were constituted and the states involved in the dispute are mentioned in Table 16.1.

INTER-STATE COUNCILS

Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states. Thus, the President can establish such a council if at any time it appears to him/her that the public interest would be served by its establishment. He/she can define the nature of duties to be performed by such a council and its organisation and procedure.

Even though the President is empowered to define the duties of an inter-state council,

[1] States Reorganisation Act, 1956.

Table 16.1 Inter-State Water Dispute Tribunals Set-up So Far

Sl. No.	Name	Set-up in	States Involved
1.	Krishna Water Disputes Tribunal-I	1969	Maharashtra, Karnataka and Andhra Pradesh
2.	Godavari Water Disputes Tribunal	1969	Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Odisha
3.	Narmada Water Disputes Tribunal	1969	Rajasthan, Gujarat, Madhya Pradesh and Maharashtra
4.	Ravi and Beas Water Disputes Tribunal	1986	Punjab, Haryana and Rajasthan
5.	Cauvery Water Disputes Tribunal	1990	Karnataka, Kerala, Tamil Nadu and Puducherry
6.	Krishna Water Disputes Tribunal-II	2004	Maharashtra, Karnataka and Andhra Pradesh
7.	Vansadhara Water Disputes Tribunal	2010	Odisha and Andhra Pradesh
8.	Mahadayi Water Disputes Tribunal	2010	Goa, Karnataka and Maharashtra
9.	Mahanadi Water Disputes Tribunal	2018	Odisha and Chhattisgarh

Article 263 specifies the duties that can be assigned to it in the following manner:

(a) enquiring into and advising upon disputes which may arise between states;
(b) investigating and discussing subjects in which the states or the Centre and the states have a common interest; and
(c) making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.

"The council's function to enquire and advice upon inter-state disputes is complementary to the Supreme Court's jurisdiction under Article 131 to decide a legal controversy between the governments. The Council can deal with any controversy whether legal or non-legal, but its function is advisory unlike that of the court which gives a binding decision."[2]

Under the above provisions of Article 263, the President has established the following councils to make recommendations for the better coordination of policy and action in the related subjects:

- Central Council of Health and Family Welfare.
- Central Council of Local Government[3]
- Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.[4]

Establishment of Inter-State Council The Sarkaria Commission on Centre-State Relations (1983–88) made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution. It recommended that in order to differentiate the Inter-State Council from other bodies established under the same Article 263, it must be called as the Inter-Governmental Council. The Commission recommended that the Council should be charged with the duties laid down in clauses (b) and (c) of Article 263 (see above).

In pursuance of the above recommendations of the Sarkaria Commission, the Janata Dal Government headed by V. P. Singh established the Inter-State Council in 1990.[5] It consists of the following members:

(i) Prime minister as the Chairman
(ii) Chief ministers of all the states
(iii) Chief ministers of union territories having legislative assemblies

[2]M.P. Jain: *Indian Constitutional Law*, Wadhwa, Fourth Edition, p. 382.

[3]It was originally known as the Central Council of Local Self-Government (1954).

[4]The Central Council of Indian Medicine and the Central Council of Homoeopathy were set up under the Acts of Parliament.

[5]The Inter-State Council Order dated May 28, 1990.

(iv) Administrators of union territories not having legislative assemblies
(v) Governors of States under President's rule
(vi) Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.

Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council.

The council is a recommendatory body on issues relating to inter-state, Centre–state and Centre–union territories relations. It aims at promoting coordination between them by examining, discussing and deliberating on such issues. Its duties, in detail, are as follows:

- investigating and discussing such subjects in which the states or the centre have a common interest;
- making recommendations upon any such subject for the better coordination of policy and action on it; and
- deliberating upon such other matters of general interest to the states as may be referred to it by the chairman.

The Council may meet at least thrice in a year. Its meetings are held in camera and all questions are decided by consensus.

There is also a Standing Committee of the Council. It was set up in 1996 for continuous consultation and processing of matters for the consideration of the Council. It consists of the following members:

(i) Union Home Minister as the Chairman
(ii) Five Union Cabinet Ministers
(iii) Nine Chief Ministers

The Council is assisted by a secretariat called the Inter-State Council Secretariat. This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.

PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS

Under the Constitution, the jurisdiction of each state is confined to its own territory. Hence, it is possible that the acts and records of one state may not be recognised in another state. To remove any such difficulty, the Constitution contains the "Full Faith and Credit" clause which lays down the following:

(i) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state. The expression 'public acts' includes both legislative and executive acts of the government. The expression 'public record' includes any official book, register or record made by a public servant in the discharge of his/her official duties.
(ii) The manner in which and the conditions under which such acts, records and proceedings are to be proved and their effect determined would be as provided by the laws of Parliament. This means that the general rule mentioned above is subject to the power of Parliament to lay down the mode of proof as well as the effect of such acts, records and proceedings of one state in another state.
(iii) Final judgements and orders of civil courts in any part of India are capable of execution anywhere within India (without the necessity of a fresh suit upon the judgement). The rule applies only to civil judgements and not to criminal judgements. In other words, it does not require the courts of a state to enforce the penal laws of another state.

INTER-STATE TRADE AND COMMERCE

Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India.

Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free. The object of this provision is to break down the border barriers between the states and to create one unit with a view to encourage the free flow of trade, commerce and intercourse in the country. The freedom under this provision is not

confined to inter-state trade, commerce and intercourse but also extends to intra-state trade, commerce and intercourse. Thus, Article 301 will be violated whether restrictions are imposed at the frontier of any state or at any prior or subsequent stage.

The freedom guaranteed by Article 301 is a freedom from all restrictions, except those which are provided for in the other provisions (Articles 302 to 305) of Part XIII of the Constitution itself. These are explained below:

(i) Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest.[6] But, the Parliament cannot give preference to one state over another or discriminate between the states except in the case of scarcity of goods in any part of India.

(ii) The legislature of a state can impose reasonable restrictions on the freedom of trade, commerce and intercourse with that state or within that state in public interest. But, a bill for this purpose can be introduced in the legislature only with the previous sanction of the president. Further, the state legislature cannot give preference to one state over another or discriminate between the states.

(iii) The legislature of a state can impose on goods imported from other states or the union territories any tax to which similar goods manufactured in that state are subject. This provision prohibits the imposition of discriminatory taxes by the state.

(iv) The freedom (under Article 301) is subject to the nationalisation laws (i.e., laws providing for monopolies in favour of the Centre or the states). Thus, the Parliament or the state legislature can make laws for the carrying on by the respective government of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

The Parliament can appoint an appropriate authority for carrying out the purposes of the above provisions relating to the freedom of trade, commerce and intercourse and restrictions on it. The Parliament can also confer on that authority the necessary powers and duties. But, no such authority has been appointed so far.[7]

ZONAL COUNCILS

The Zonal Councils are the statutory (and not the constitutional) bodies. They are established by an Act of the Parliament, that is, States Reorganisation Act of 1956. The act divided the country into five zones (Northern, Central, Eastern, Western and Southern) and provided a zonal council for each zone.

While forming these zones, several factors have been taken into account which include: the natural divisions of the country, the river systems and means of communication, the cultural and linguistic affinity and the requirements of economic development, security and law and order.

Each zonal council consists of the following members: **(a)** home minister of Central government. **(b)** chief ministers of all the States in the zone. **(c)** Two other ministers from each state in the zone. **(d)** Administrator of each union territory in the zone.

Besides, the following persons can be associated with the zonal council as advisors (i.e., without the right to vote in the meetings):

(i) a person nominated by the NITI Aayog;
(ii) chief secretary of the government of each

[6]For example, the Parliament has made the Essential Commodities Act (1955). This Act enables the Central government to control the production, supply and distribution of certain essential commodities like petroleum, coal, iron and steel and so on.

[7]In USA, such authority is known as the Inter-State Commerce Commission.

state in the zone; and (iii) development commissioner of each state in the zone.

The home minister of Central government is the common chairman of the five zonal councils. Each chief minister acts as a vice-chairman of the council by rotation, holding office for a period of one year at a time.

The zonal councils aim at promoting cooperation and coordination between states, union territories and the Centre. They discuss and make recommendations regarding matters like economic and social planning, linguistic minorities, border disputes, inter-state transport, and so on. They are only deliberative and advisory bodies.

The objectives (or the functions) of the zonal councils, in detail, are as follows:

- To achieve an emotional integration of the country.
- To help in arresting the growth of acute state-consciousness, regionalism, linguism and particularistic trends.
- To help in removing the after-effects of separation in some cases so that the process of reorganisation, integration and economic advancement may synchronise.
- To enable the Centre and states to cooperate with each other in social and economic matters and exchange ideas and experience in order to evolve uniform policies.
- To cooperate with each other in the successful and speedy execution of major development projects.
- To secure some kind of political equilibrium between different regions of the country.

North-Eastern Council In addition to the above Zonal Councils, a North-Eastern Council was created by a separate Act of Parliament—the North-Eastern Council Act of 1971.[8] Its members include Assam, Manipur, Mizoram, Arunchal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim.[9] Its functions are similar to those of the zonal councils, but with few additions. It has to formulate a unified and coordinated regional plan covering matters of common importance. It has to review from time to time the measures taken by the member states for the maintenance of security and public order in the region.

Table 16.2 Zonal Councils at a Glance

Name	Members	Headquarters
1. Northern Zonal Council	Himachal Pradesh, Haryana, Punjab, Rajasthan, Delhi, Chandigarh, Jammu and Kashmir and Ladakh	New Delhi
2. Central Zonal Council	Uttar Pradesh, Uttarakhand, Chhattisgarh, and Madhya Pradesh	Allahabad
3. Eastern Zonal Council	Bihar, Jharkhand, West Bengal and Odisha	Kolkata
4. Western Zonal Council	Gujarat, Maharastra, Goa and Dadra and Nagar Haveli and Daman and Diu	Mumbai
5. Southern Zonal Council	Andhra Pradesh, Telangana, Karnataka, Tamil Nadu, Kerala and Puducherry	Chennai

[8]It came into existence on August 8, 1972.
[9]In 2002, Sikkim was added as the eighth member of the North-Eastern Council.

Table 16.3 Articles Related to Inter-State Relations at a Glance

Article No.	Subject Matter
	Mutual Recognition of Public Acts, etc.
261.	Public acts, records and judicial proceedings
	Disputes Relating to Waters
262.	Adjudication of disputes relating to waters of inter-state rivers or river valleys
	Co-ordination between States
263.	Provisions with respect to an inter-state council
	Inter-State Trade and Commerce
301.	Freedom of trade, commerce and intercourse
302.	Power of Parliament to impose restrictions on trade, commerce and intercourse
303.	Restrictions on the legislative powers of the Union and of the states with regard to trade and commerce
304.	Restrictions on trade, commerce and intercourse among states
305.	Saving of existing laws and laws providing for state monopolies
306.	Power of certain states in Part B of the First Schedule to impose restrictions on trade and commerce (Repealed)
307.	Appointment of authority for carrying out the purposes of Articles 301 to 304

CHAPTER 17 Emergency Provisions

The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.

During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal during normal times to unitary during Emergency is a unique feature of the Indian Constitution. In this context, Dr. B.R. Ambedkar observed in the Constituent Assembly that[1]:

> 'All federal systems including American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, the Constitution of India can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of Emergency, it is so designed as to make it work as though it was a unitary system.'

[1] *Constituent Assembly Debates,* Volume VII, p. 34.

The Constitution stipulates three types of emergencies:

1. An emergency due to war, external aggression or armed rebellion[2] (Article 352). This is popularly known as 'National Emergency'. However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
2. An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as 'President's Rule'. It is also known by two other names—'State Emergency' or 'constitutional Emergency'. However, the Constitution does not use the word 'emergency' for this situation.
3. Financial Emergency due to a threat to the financial stability or credit of India (Article 360).

NATIONAL EMERGENCY

Grounds of Declaration

Under Article 352, the President can declare a National Emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion. It may be noted that the President can declare a National Emergency even before the actual occurrence of war or external aggression or armed rebellion, if he/she is satisfied that there is an imminent danger.

[2] The phrase 'armed rebellion' was inserted by the 44th Amendment Act of 1978, replacing the original phrase 'internal disturbance'.

The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him/her and such proclamation is in operation. This provision was added by the 38th Amendment Act of 1975.

When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.

A proclamation of National Emergency may be applicable to the entire country or only a part of it. The 42nd Amendment Act of 1976 enabled the President to limit the operation of a National Emergency to a specified part of India.

Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation. Hence, the 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance' as was done in 1975 by the Congress government headed by Indira Gandhi.

The President, however, can proclaim a National Emergency only after receiving a written recommendation from the cabinet[3]. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the Prime Minister. In 1975, the then Prime Minister, Indira Gandhi advised the President to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a *fait accompli*. The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the Prime Minister alone taking a decision in this regard.

The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978. Further, in the *Minerva Mills* case[4], (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

Parliamentary Approval and Duration

The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th Amendment Act of 1978. However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months. This provision for periodical parliamentary approval was also added by the 44th Amendment Act of 1978. Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the

[3]Article 352 defines the term 'Cabinet' as the council consisting of the Prime Minister and other ministers of the Cabinet rank.

[4]*Minerva Mills* vs. *Union of India* (1980).

Rajya Sabha has in the mean-time approved its continuation.

Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is, (a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the members of that house present and voting. This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament.

Revocation of Proclamation

A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th Amendment Act of 1978. Before the amendment, a proclamation could be revoked by the President on his/her own and the Lok Sabha had no control in this regard.

The 44th Amendment Act of 1978 also provided that, where one-tenth of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the President if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving the continuation of the proclamation.

A resolution of disapproval is different from a resolution approving the continuation of a proclamation in the following two respects:

1. The first one is required to be passed by the Lok Sabha only, while the second one needs to be passed by the both Houses of Parliament.
2. The first one is to be adopted by a simple majority only, while the second one needs to be adopted by a special majority.

Effects of National Emergency

A proclamation of Emergency has drastic and wide ranging effects on the political system. These consequences can be grouped into three categories:

1. Effect on the Centre–state relations,
2. Effect on the life of the Lok Sabha and State assembly, and
3. Effect on the Fundamental Rights.

Effect on the Centre–State Relations While a proclamation of Emergency is in force, the normal fabric of the Centre–state relations undergoes a basic change. This can be studied under three heads, namely, executive, legislative and financial.

(a) Executive During a National Emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. In normal times, the Centre can give executive directions to a state only on certain specified matters. However, during a National Emergency, the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

(b) Legislative During a National Emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament. Thus, the normal distribution of the legislative powers between the Centre and states is suspended, though the State Legislatures are not suspended. In brief, the Constitution becomes unitary rather than federal.

The laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate.

Notably, while a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session.

Further, the Parliament can confer powers and impose duties upon the Centre or its officers and authorities in respect of matters outside the Union List, in order to carry out the laws made by it under its extended jurisdiction as a result of the proclamation of a National Emergency.

The 42nd Amendment Act of 1976 provided that the two consequences mentioned above (executive and legislative) extends not only to a state where the Emergency is in operation but also to any other state.

(c) Financial While a proclamation of national emergency is in operation, the President can modify the constitutional distribution of revenues between the centre and the states. This means that the President can either reduce or cancel the transfer of finances from Centre to the states. Such modification continues till the end of the financial year in which the Emergency ceases to operate. Also, every such order of the President has to be laid before both the Houses of Parliament.

Effect on the Life of the Lok Sabha and State Assembly While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. For example, the term of the Fifth Lok Sabha (1971–1977) was extended two times by one year at a time[5].

Similarly, the Parliament may extend the normal tenure of a state legislative assembly (five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights Articles 358 and 359 describe the effect of a National Emergency on the Fundamental Rights. Article 358 deals with the suspension of the Fundamental Rights guaranteed by Article 19, while Article 359 deals with the suspension of other Fundamental Rights (except those guaranteed by Articles 20 and 21). These two provisions are explained below:

(a) Suspension of Fundamental Rights under Article 19 According to Article 358, when a proclamation of national emergency is made, the six Fundamental Rights under Article 19 are automatically suspended. No separate order for their suspension is required.

While a proclamation of national emergency is in operation, the state is freed from the restrictions imposed by Article 19. In other words, the state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Article 19. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the six Fundamental Rights guaranteed by Article 19. When the National Emergency ceases to operate, Article 19 automatically revives and comes into force. Any law made during Emergency, to the extent of inconsistency with Article 19, ceases to have effect. However, no remedy lies for anything done during the Emergency even after the Emergency expires. This means that the legislative and executive actions taken during the emergency cannot be challenged even after the Emergency ceases to operate.

The 44th Amendment Act of 1978 restricted the scope of Article 358 in two ways. Firstly, the six Fundamental Rights under Article 19 stands suspended only when the National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion. Secondly, only those

[5]The term of the Fifth Lok Sabha which was to expire on 18 March, 1976 was extended by one year upto 18 March, 1977 by the House of the People (Extension of Duration) Act, 1976. It was extend for a further period of one year upto 18 March, 1978 by the House of the People (Extension of Duration) Amendment Act, 1976. However, the House was dissolved on 18 January, 1977, after having been in existence for a period of five years, ten months and six days.

laws which are related with the Emergency are protected from being challenged and not other laws. Also, the executive action taken only under such a law is protected.

(b) Suspension of other Fundamental Rights

Article 359 authorises the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. This means that under Article 359, the Fundamental Rights as such are not suspended, but only their enforcement. The said rights are theoretically alive but the right to seek remedy is suspended. The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country. It should be laid before each House of Parliament for approval.

While a Presidential Order is in force, the State can make any law or can take any executive action abridging or taking away the specified Fundamental Rights. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the specified Fundamental Rights. When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified Fundamental Rights, ceases to have effect. But no remedy lies for anything done during the operation of the order even after the order ceases to operate. This means that the legislative and executive actions taken during the operation of the Order cannot be challenged even after the Order expires.

The 44th Amendment Act of 1978 restricted the scope of Article 359 in two ways. Firstly, the President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 and 21. In other words, the right to protection in respect of conviction for offences (Article 20) and the right to life and personal liberty (Article 21) remain enforceable even during emergency. Secondly, only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected.

Distinction Between Articles 358 and 359

The differences between Articles 358 and 359 can be summarised as follows:

1. Article 358 is confined to Fundamental Rights under Article 19 only whereas Article 359 extends to all those Fundamental Rights whose enforcement is suspended by the Presidential Order.
2. Article 358 automatically suspends the fundamental rights under Article 19 as soon as the emergency is declared. On the other hand, Article 359 does not automatically suspend any Fundamental Right. It only empowers the president to suspend the enforcement of the specified Fundamental Rights.
3. Article 358 operates only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion). Article 359, on the other hand, operates in case of both External Emergency as well as Internal Emergency.
4. Article 358 suspends Fundamental Rights under Article 19 for the entire duration of Emergency while Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.
5. Article 358 extends to the entire country whereas Article 359 may extend to the entire country or a part of it.
6. Article 358 suspends Article 19 completely while Article 359 does not empower the suspension of the enforcement of Articles 20 and 21.
7. Article 358 enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19 while Article 359 enables

the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

There is also a similarity between Article 358 and Article 359. Both provide immunity from challenge to only those laws which are related with the Emergency and not other laws. Also, the executive action taken only under such a law is protected by both.

Declarations Made So Far

This type of Emergency has been proclaimed three times so far—in 1962, 1971 and 1975.

The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA (North-East Frontier Agency—now Arunachal Pradesh), and was in force till January 1968. Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965.

The second proclamation of national emergency was made in December 1971 in the wake of attack by Pakistan. Even when this Emergency was in operation, a third proclamation of National Emergency was made in June 1975. Both the second and third proclamations were revoked in March 1977.

The first two proclamations (1962 and 1971) were made on the ground of 'external aggression', while the third proclamation (1975) was made on the ground of 'internal disturbance', that is, certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.

The Emergency declared in 1975 (internal emergency) proved to be the most controversial. There was widespread criticism of the misuse of Emergency powers. In the elections held to the Lok Sabha in 1977 after the Emergency, the Congress Party led by Indira Gandhi lost and the Janta Party came to power. This government appointed the Shah Commission to investigate the circumstances that warranted the declaration of an Emergency in 1975. The commission did not justify the declaration of the Emergency. Hence, the 44th Amendment Act was enacted in 1978 to introduce a number of safeguards against the misuse of Emergency provisions.

PRESIDENT'S RULE

Grounds of Imposition

Article 355 imposes a duty on the Centre to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state. This is popularly known as 'President's Rule'. It is also known as 'State Emergency' or 'Constitutional Emergency'.

The President's Rule can be proclaimed under Article 356 on two grounds—one mentioned in Article 356 itself and another in Article 365:

1. Article 356 empowers the President to issue a proclamation, if he/she is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the President can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report).
2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.

Parliamentary Approval and Duration

A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of President's Rule is issued at a time when the

Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the mean time.

If approved by both the Houses of Parliament, the President's Rule continues for six months[6]. It can be extended for a maximum period of three years[7] with the approval of the Parliament, every six months. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.

Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that House present and voting.

The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year. Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:

1. A proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
2. The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Consequences of President's Rule

The President acquires the following extraordinary powers when the President's Rule is imposed in a state:

1. He/she can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
2. He/she can declare that the powers of the state legislature are to be exercised by the Parliament.
3. He/she can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

Therefore, when the President's Rule is imposed in a state, the President dismisses the state council of ministers headed by the chief minister. The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President. This is the reason why a proclamation under Article 356 is popularly known as the imposition of 'President's Rule' in a state. Further, the President either suspends or dissolves the state legislative assembly[8]. The Parliament passes the state legislative bills and the state budget.

When the state legislature is thus suspended or dissolved:

1. The Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him/her in this regard,
2. The Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities, and

[6]The 42nd Amendment Act of 1976 had raised the period of six months to one year. Thus, once approved by both the Houses of Parliament, the proclamation of President's Rule could continue for one year. But, the 44th Amendment Act of 1978 again reduced the period to six months.

[7]The President's Rule imposed in May, 1987 in Punjab was allowed to continue for five years under the 68th Amendment Act of 1991.

[8]In case of dissolution, fresh elections are held for constituting a new legislative assembly in the state.

3. The President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament.

A law made by the Parliament or the President or any other specified authority continues to be operative even after the President's Rule. This means that the period for which such a law remains in force is not coterminous with the duration of the proclamation. But it can be repealed or altered or re-enacted by the state legislature.

It should be noted here that the President cannot assume to himself the powers vested in the concerned state high court or suspend the provisions of the Constitution relating to it. In other words, the constitutional position, status, powers and functions of the concerned state high court remain the same even during the President's Rule.

A comparison of the National Emergency and the President's Rule (in terms of the grounds, parliamentary approval, duration, revocation and consequences) is given in Table 17.1.

Table 17.1 Comparing National Emergency and President's Rule

National Emergency (Article 352)	President's Rule (Article 356)
1. It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	1. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2. During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	2. During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3. Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority.	3. Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him/her. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts.
4. There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	4. There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
5. Under this, the relationship of the Centre with all the states undergoes a modification.	5. Under this, the relationship of only the state under emergency with the Centre undergoes a modification.
6. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	6. Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
7. It affects fundamental rights of the citizens.	7. It has no effect on Fundamental Rights of the citizens.
8. Lok Sabha can pass a resolution for its revocation.	8. There is no such provision. It can be revoked by the President only on his/her own.

Use of Article 356

Since 1950, the President's Rule has been imposed on more than 125 occasions. Further, on a number of occasions, the President's Rule has been imposed in an arbitrary manner for political or personal reasons. Hence, Article 356 has become one of the most controversial and most criticised provision of the Constitution.

For the first time, the President's Rule was imposed in Punjab in 1951. By now, all most all the states have been brought under the President's Rule, once or twice or more.

When general elections were held to the Lok Sabha in 1977 after the internal emergency, the ruling Congress Party lost and the Janata Party came to power. The new government headed by Morarji Desai imposed President's Rule in nine states[9] (where the Congress Party was in power) on the ground that the assemblies in those states no longer represented the wishes of the electorate. When the Congress Party returned to power in 1980, it did the same in nine states[10] on the same ground.

In 1992, President's Rule was imposed in three BJP-ruled states (Madhya Pradesh, Himachal Pradesh and Rajasthan) by the Congress Party on the ground that they were not implementing sincerely the ban imposed by the Centre on religious organisations. In a landmark judgement in the *Bommai* case[11] (1994), the Supreme Court upheld the validity of this proclamation on the ground that secularism is a 'basic feature' of the Constitution. But, the court did not uphold the validity of the imposition of the President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991.

Dr. B.R. Ambedkar, while replying to the critics of this provision in the Constituent Assembly, hoped that the drastic power conferred by Article 356 would remain a 'dead-letter' and would be used only as a measure of last resort. He observed[12]:

> "The intervention of the Centre must be deemed to be barred, because that would be an invasion on the sovereign authority of the province (state). That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be under some obligation which the Constitution imposes upon the Centre. The proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead-letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precautions before actually suspending the administration of the province."

However, the subsequent events show that what was hoped to be a 'dead-letter' of the Constitution has turned to be a 'deadly-weapon' against a number of state governments and legislative assemblies. In this context, H.V. Kamath, a member of the Constituent Assembly commented: 'Dr. Ambedkar is dead and the Articles are very much alive'.

Scope of Judicial Review

The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

In the *Bommai* case (1994), the following propositions have been laid down by the

[9] Those nine States include Rajasthan, Uttar Pradesh, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh, Orissa, West Bengal and Haryana.

[10] Those nine states include Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Punjab, Orissa, Gujarat, Maharashtra and Tamil Nadu.

[11] *S.R. Bommai* vs. *Union of India* (1994).

[12] *Constituent Assembly Debates*, Volume IX, pp. 133 and 177.

Supreme Court on imposition of President's Rule in a state under Article 356:

1. The presidential proclamation imposing President's Rule is subject to judicial review.
2. The satisfaction of the President must be based on relevant material. The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.
3. Burden lies on the Centre to prove that relevant material exist to justify the imposition of the President's Rule.
4. The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.
5. If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.
6. The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation. Until such approval is given, the president can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.
7. Secularism is one of the 'basic features' of the Constitution. Hence, a state government pursuing anti-secular politics is liable to action under Article 356.
8. The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated.
9. Where a new political party assumes power at the Centre, it will not have the authority to dismiss ministries formed by other parties in the states.
10. The power under Article 356 is an exceptional power and should be used only occassionally to meet the requirements of special situations.

Cases of Proper and Improper Use

Based on the report of the Sarkaria Commission on Centre–state Relations (1988), the Supreme Court in *Bommai* case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper[13].

Imposition of President's Rule in a state would be proper in the following situations:

1. Where after general elections to the assembly, no party secures a majority, that is, 'Hung Assembly'.
2. Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.
3. Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.
4. Where a constitutional direction of the Central government is disregarded by the state government.
5. Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
6. Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

The imposition of President's Rule in a state would be improper under the following situations:

1. Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President's Rule without probing the possibility of forming an alternative ministry.
2. Where the governor makes his/her own assessment of the support of a ministry in the assembly and recommends imposition of President's Rule without

[13] *Report of the Commission on Centre–State Relations*, Part I, pp. 165–180 (1988).

allowing the ministry to prove its majority on the floor of the Assembly.

3. Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.
4. Internal disturbances not amounting to internal subversion or physical breakdown.
5. Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.
6. Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
7. Where the power is used to sort out intra-party problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

FINANCIAL EMERGENCY

Grounds of Declaration

Article 360 empowers the President to proclaim a Financial Emergency if he/she is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

The 38th Amendment Act of 1975 made the satisfaction of the President in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

Parliamentary Approval and Duration

A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:

1. there is no maximum period prescribed for its operation; and
2. repeated parliamentary approval is not required for its continuation.

A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting.

A proclamation of Financial Emergency may be revoked by the president at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Effects of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

1. The executive authority of the Centre extends to the giving of (a) directions to any state to observe the canons of financial propriety; and (b) such other directions to any state as the President may deem necessary.
2. Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.
3. The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.

Thus, during the operation of a financial emergency, the Centre acquires full control over the states in financial matters. H.N. Kunzru, a member of the Constituent Assembly, stated that the financial emergency provisions pose a serious threat to the financial autonomy of the states. Explaining the reasons for their inclusion in the Constitution, Dr. B.R. Ambedkar observed in the Constituent Assembly[14]:

> "This Article more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933, which gave the president power to make similar provisions in order to remove the difficulties, both economical and financial, that had overtaken the American people, as a result of the Great Depression."

No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

CRITICISM OF THE EMERGENCY PROVISIONS

Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the Constitution on the following grounds[15]:

1. 'The federal character of the Constitution will be destroyed and the Union will become all powerful.
2. The powers of the State—both the Union and the units—will entirely be concentrated in the hands of the Union executive.
3. The President will become a dictator.
4. The financial autonomy of the state will be nullified.
5. Fundamental rights will become meaningless and, as a result, the democratic foundations of the Constitution will be destroyed.'

Thus, H.V. Kamath observed: 'I fear that by this single chapter we are seeking to lay the foundation of a totalitarian state, a police state, a state completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continuous jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert. It will be a day of shame and sorrow when the President makes use of these powers having no parallel in any Constitution of the democratic countries of the world'[16].

K.T. Shah described them as: 'A chapter of reaction and retrogression. I find one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter: **(a)** to arm the Centre with special powers against the units and **(b)** to arm the government against the people'.

T.T. Krishnamachari feared that 'by means of these provisions the President and the Executive would be exercising a form of constitutional dictatorship'[17].

H.N. Kunzru opined that 'the emergency financial provisions pose a serious threat to the financial autonomy of the States.'

However, there were also protagonists of the emergency provisions in the Constituent Assembly. Thus, Sir Alladi Krishnaswami Ayyar labelled them as 'the very life-breath of the Constitution'. Mahabir Tyagi opined that they would work as a 'safety-valve' and thereby help in the maintenance of the Constitution[18].

While defending the emergency provisions in the Constituent Assembly, Dr. B.R. Ambedkar also accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes'[19].

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[14] *Constituent Assembly Debates,* Volume X, pp. 361–372.
[15] Quoted from M.V. Pylee, *India's Constitution,* S Chand, Fifth Edition, 1994, p. 280.
[16] *Constituent Assembly Debates,* Volume IX, p. 105.
[17] *Ibid,* p. 123.
[18] *Ibid,* p. 547.
[19] *Ibid,* p. 177.

Table 17.2 Articles Related to Emergency Provisions at a Glance

Article No.	Subject-matter
352.	Proclamation of Emergency
353.	Effect of Proclamation of Emergency
354.	Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation
355.	Duty of the Union to protect states against external aggression and internal disturbance
356.	Provisions in case of failure of constitutional machinery in states
357.	Exercise of legislative powers under proclamation issued under Article 356
358.	Suspension of provisions of Article 19 during Emergencies
359.	Suspension of the enforcement of the rights conferred by Part III during Emergencies
359A.	Application of this part to the state of Punjab (Repealed)
360.	Provisions as to Financial Emergency

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PART III Central Government

In this Part...

CHAPTER 18 President

Articles 52 to 78 in Part V of the Constitution deal with the Union executive. The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.

The President is the head of the Indian State. He/she is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of electoral college consisting of:

1. the elected members of both the Houses of Parliament;
2. the elected members of the legislative assemblies of the states; and
3. the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry[1].

Thus, the nominated members of both the Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President.

The 104th Constitutional Amendment Act of 2019 has not extended further the nomination of Anglo-Indian members to the Lok Sabha and State Legislative Assemblies. In other words, the amendment discontinued the provision of special representation of the Anglo-Indian community in the Lok Sabha and State Legislative Assemblies by nomination. Consequently, this provision ceased to have effect on the 25th January 2020.

Further, where an assembly is dissolved, the members cease to be qualified to vote in the presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.

The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each elected member of the legislative assembly of each state and the

[1]This provision was added by the 70th Constitutional Amendment Act of 1992 with effect from June 1, 1995.

Parliament is entitled to cast at such election shall be determined in the following manner:

1. Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly[2]. This can be expressed as:

$$\text{Value of the vote of an MLA} = \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

2. Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament. This can be expressed as:

$$\text{Value of the vote of an MP} = \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

An illustration of the value of votes of each Member of the Legislative Assemblies of the states, total value of votes of each of the states, the value of votes of each Member of Parliament, the total value of votes of the Members of Parliament and the grand total of value of all the members in the electoral college for the presidential election, 2022 is given in Table 18.4.

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as:

$$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1=(2)} + 1$$

Each member of the electoral college is given only one ballot paper. The voter, while casting his/her vote, is required to indicate his/her preferences by marking 1, 2, 3, 4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray.

In the first phase, the first preference votes are counted. In case, a candidate secures the required quota in this phase, he/she is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his/her second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

All doubts and disputes in connection with election of the President are enquired into and decided by the Supreme Court whose decision is final. The election of a person as President cannot be challenged on the ground that the electoral college was incomplete (ie, existence of any vacancy among the members of electoral college). If the election of a person as President is declared void by the Supreme Court, acts done by him/her before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force.

Some members of the Constituent Assembly criticised the system of indirect election for the President as undemocratic and proposed the idea of direct election. However,

[2]According to the 84th Constitutional Amendment Act of 2001, the expression 'population' means the population as ascertained at the 1971 census, until the relevant figures for the first census taken after 2026 have been published.

the Constitution makers chose the indirect election due to the following reasons[3]:

1. The indirect election of the President is in harmony with the parliamentary system of government envisaged in the Constitution. Under this system, the President is only a nominal executive and the real powers are vested in the council of ministers headed by the Prime Minister. It would have been anomalous to have the President elected directly by the people and not give him/her any real power.
2. The direct election of the President would have been very costly and time and energy-consuming due to the vast size of the electorate. This is unwarranted keeping in view that he/she is only a symbolic head.

Some members of the Constituent Assembly suggested that the President should be elected by the members of the two Houses of Parliament alone. The makers of the Constitution did not prefer this as the Parliament, dominated by one political party, would have invariably chosen a candidate from that party and such a President could not represent the states of the Indian Union. The present system makes the President a representative of the Union and the states equally.

Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could better be called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

The various presidential elections held so far are summarised in Table 18.1.

[3]*Constituent Assembly Debates*, Volume IV, pp. 733–736

Table 18.1 Elections of the Presidents (1952–till now)

Sl. No.	Election Year	Victorious Candidate	No. of Votes Secured (%)	Main Rival Candidate	No. of Votes Secured (%)
1.	1952	Dr. Rajendra Prasad	507400 (83.81)	K.T. Shah	92827 (15.3)
2.	1957	Dr. Rajendra Prasad	459698 (99.35)	N.N. Das	2000 (0.4)
3.	1962	Dr. S. Radhakrishnan	553067 (98.24)	Ch. Hari Ram	6341 (1.1)
4.	1967	Dr. Zakir Hussain	471244 (56.23)	K. Subba Rao	363971 (43.4)
5.	1969	V.V. Giri	420077 (50.22)	N. Sanjeeva Reddy	405427 (48.5)
6.	1974	Fakhruddin Ali Ahmed	756587 (80.18)	Tridev Chaudhuri	189186 (19.8)
7.	1977	N. Sanjeeva Reddy	—	Unopposed	—
8.	1982	Giani Zail Singh	754113 (72.73)	H.R. Khanna	282685 (27.6)
9.	1987	R. Venkataraman	740148 (72.29)	V. Krishna Ayyer	281550 (27.1)
10.	1992	Dr. Shankar Dayal Sharma	675564 (65.86)	George Swell	346485 (33.21)
11.	1997	K.R. Narayanan	956290 (94.97)	T.N. Sheshan	50431 (5.07)
12.	2002	Dr. A.P.J. Abdul Kalam	922844 (89.58)	Laxmi Sehgal	107366 (10.42)
13.	2007	Ms. Pratibha Patil	638116 (65.82)	B.S. Shekhawat	331306 (34.17)
14.	2012	Pranab Mukherjee	713763 (68.12)	P.A. Sangma	315987 (30.15)
15.	2017	Ram Nath Kovind	702044 (65.65)	Meira Kumar	367314 (34.35)
16.	2022	Droupadi Murmu	676803 (64.03)	Yashwant Sinha	380177 (35.97)

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications for Election as President

A person to be eligible for election as President should fulfil the following qualifications:

1. He/she should be a citizen of India.
2. He/she should have completed 35 years of age.
3. He/she should be qualified for election as a member of the Lok Sabha.
4. He/she should not hold any office of profit under the Union government or any state government or any local authority or any other public authority. A sitting President or Vice-President of the Union, the Governor of any state and a minister of the Union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled. Before 1997, number of proposers and seconders was ten each and the amount of security deposit was ₹2,500. In 1997, they were increased to discourage the non-serious candidates[4].

Oath or Affirmation by the President

Before entering upon his/her office, the President has to make and subscribe to an oath or affirmation. In his/her oath, the President swears:

1. to faithfully execute the office;
2. to preserve, protect and defend the Constitution and the law; and
3. to devote himself to the service and well-being of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his/her absence, the seniormost judge of the Supreme Court available.

Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

1. He/she should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he/she is deemed to have vacated his/her seat in that House on the date on which he/she enters upon his/her office as President.
2. He/she should not hold any other office of profit.
3. He/she is entitled, without payment of rent, to the use of his/her official residence (the Rastrapathi Bhavan).
4. He/she is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
5. His/her emoluments and allowances cannot be diminished during his/her term of office.

In 2018, the Parliament increased the salary of the President from ₹1.50 lakh to ₹5 lakh per month[4a]. Earlier in 2008, the pension of the retired President was increased from ₹3 lakh per annum to 50% of his/her salary per month[5]. In addition, the former Presidents are entitled to furnished residence, phone facilities, car, medical treatment, travel facility, secretarial staff and office expenses upto ₹1,00,000 per annum. The spouse of a deceased President is also entitled to a family pension at the rate of 50% of pension of a retired President, furnished residence, phone facility, car,

[4]The presidential and vice-presidential Elections Act of 1952, as amended in 1997.

[4a]Vide the Finance Act, 2018, with effect from 1st January, 2016. This Act amended the President's Emoluments and Pension Act, 1951.

[5]The President's Emoluments and Pension Amendment Act of 2008.

medical treatment, travel facility, secretarial staff and office expenses upto ₹20,000 per annum.

The President is entitled to a number of privileges and immunities. He/she enjoys personal immunity from legal liability for his/her official acts. During his/her term of office, he/she is immune from any criminal proceedings, even in respect of his/her personal acts. He/she cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him/her during his/her term of office in respect of his/her personal acts.

TERM, IMPEACHMENT AND VACANCY

Term of President's Office

The President holds office for a term of five years from the date on which he/she enters upon his/her office. However, he/she can resign from his/her office at any time by addressing the resignation letter to the Vice-President. Further, he/she can also be removed from the office before completion of his/her term by the process of impeachment.

The President can hold office beyond his/her term of five years until his/her successor assumes charge. He/she is also eligible for re-election to that office. He/she may be elected for any number of terms[6]. However, in USA, a person cannot be elected to the office of the President more than twice.

Impeachment of President

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of the Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges. The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his/her office from the date on which the resolution is so passed.

Thus, an impeachment is a quasi-judicial procedure in the Parliament. In this context, two things should be noted: **(a)** the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his/her election and **(b)** the elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his/her election.

It must be noted here that no President has so far been impeached.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways:

1. On the expiry of his/her tenure of five years.
2. By his/her resignation.
3. On his/her removal by the process of impeachment.
4. By his/her death[7].
5. Otherwise, for example, when he/she becomes disqualified to hold office or when his/her election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In

[6]No person except Dr. Rajendra Prasad has occupied the office for two terms.

[7]So far two Presidents, Dr. Zakir Hussain and Fakhruddin Ali Ahmed, have died during their term of office.

Military Powers

He/she is the supreme commander of the defence forces of India. In that capacity, he/she appoints the chiefs of the Army, the Navy and the Air Force. He/she can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:

(a) National Emergency (Article 352);
(b) President's Rule (Article 356 & 365); and
(c) Financial Emergency (Article 360)

(a) ***National Emergency:*** The President can proclaim emergency in the entire country or in any part of it on the following grounds:

(i) War or
(ii) External aggression or
(iii) Armed rebellion

The President acquires the following extraordinary powers during a national emergency:

(i) He/she can modify the pattern of the distribution of financial resourcres between the Union and the states.
(ii) He/she can suspend the Fundamental Rights of citizens except the right to life and personal liberty (Article 21) and the right to protection in respect of conviction for offences (Article 20).

(b) ***President's Rule:*** It is also known as a state emergency or a constitutional emergency. It can be proclaimed by the President on the following grounds:

(i) Failure of constitutional machinery in the states (Article 356) or
(ii) Failure to comply with or to give effect to directions given by the Union (Article 365)

The President acquires the following extraordinary powers when the President's rule is imposed in a state:

(i) He/she can assign to himself all or any of the functions of the state government and all or any of the powers vested in the governor or anybody or authority in the state.
(ii) He/she can declare that the powers of the state legislature shall be exercisable by or under the authority of the Parliament.
(iii) He/she can authorise, when the Lok Sabha is not in session, expenditure from the Consolidated Fund of the state, pending the sanction of such expenditure by the Parliament.

(c) ***Financial Emergency:*** The President can proclaim financial emergency if he/she is satisfied that the financial stability or credit of India or any part thereof, is threatened.

During a financial emergency, the President can issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union, including the judges of the Supreme Court and High Courts.

VETO POWER OF THE PRESIDENT

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he/she has three alternatives (under Article 111 of the Constitution):

1. He/she may give his assent to the bill, or
2. He/she may withhold his/her assent to the bill, or
3. He/she may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his/her assent to the bill.

case of any delay in conducting the election of new President by any reason, the outgoing President continues to hold office (beyond his/her term of five years) until his/her successor assumes charge. This is provided by the Constitution in order to prevent an 'interregnum'. In this situation, the Vice-President does not get the opportunity to act as President or to discharge the functions of the President.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy. The newly-elected President remains in office for a full term of five years from the date he/she assumes charge of his/her office.

When a vacancy occurs in the office of the President due to his/her resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected. Further, when the sitting President is unable to discharge his/her functions due to absence, illness or any other cause, the Vice-President discharges his/her functions until the President resumes his/her office.

In case the office of Vice-President is vacant, the Chief Justice of India (or if his/her office is also vacant, the seniormost judge of the Supreme Court available) acts as the President or discharges the functions of the President[8].

When any person, ie, Vice-President, chief justice of India, or the seniormost judge of the Supreme Court is acting as the President or discharging the functions of the President, he/she enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are determined by the Parliament.

[8]For example, when President Dr. Zakir Hussain died in May, 1969, the then Vice-President, V.V. Giri was acting as the President. Soon after V.V. Giri resigned to contest the election of the President. Then the Chief Justice of India, M. Hidayatullah worked as the officiating President from 20 July, 1969 to 24 August, 1969.

POWERS AND FUNCTIONS OF THE PRESIDENT

The powers enjoyed and the functions performed by the President can be studied under the following heads:

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

Executive Powers

The executive powers and functions of the President are:

(a) All executive actions of the Government of India are formally taken in his/her name.

(b) He/she can make rules specifying the manner in which the orders and other instruments made and executed in his/her name shall be authenticated.

(c) He/she can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.

(d) He/she appoints the Prime Minister and the other ministers. They hold office during his/her pleasure.

(e) He/she appoints the attorney general of India and determines his/her remuneration. The attorney general holds office during the pleasure of the President.

(f) He/she appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.

(g) He/she can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.

(h) He/she can require the Prime Minister to submit, for consideration of the council

of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.

(i) He/she can appoint a commission to investigate into the conditions of backward classes.

(j) He/she can appoint an inter-state council to promote Centre–state and inter-state cooperation.

(k) He/she directly administers the union territories through administrators appointed by him/her.

(l) He/she can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

Legislative Powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

(a) He/she can summon or prorogue the Parliament and dissolve the Lok Sabha. He/she can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.

(b) He/she can address the Parliament at the commencement of the first session after each general election and the first session of each year.

(c) He/she can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.

(d) He/she can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he/she can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

(e) He/she nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

(f) He/she nominated (before 2020) two members to the Lok Sabha from the Anglo-Indian community. However, the 104th Constitutional Amendment Act of 2019 has discontinued this provision.

(g) He/she decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.

(h) His/her prior recommendation or permission is needed to introduce certain types of bills in the Parliament. They are: (i) a bill involving expenditure from the Consolidated Fund of India, (ii) a bill for the alteration of boundaries of states or creation of a new state, (iii) a money bill, (iv) a bill that imposes or varies any tax or duty in which states are interested, (v) a bill which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income tax, (vi) a bill which affects the principles on which sums of money are or may be distributable to states and (vii) a bill that imposes any surcharge on any specified tax or duty for the purpose of the centre.

Further, a state bill imposing restrictions on the freedom of trade, commerce and intercourse with that state or within that state can be introduced in the legislature of the state only with the previous sanction of the President.

(i) When a bill is sent to the President after it has been passed by the Parliament, he/she can:

(i) give his/her assent to the bill, or

(ii) withhold his/her assent to the bill, or

(iii) return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his/her assent to the bill.

(j) When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:
  (i) give his/her assent to the bill, or
  (ii) withhold his/her assent to the bill, or
  (iii) direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his/her assent even if the bill is again passed by the state legislature and sent again to him/her for his/her consideration.

(k) He/she can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He/she can also withdraw an ordinance at any time.

(l) He/she lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

(m) He/she can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu and Ladakh. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

Financial Powers

The financial powers and functions of the President are:

(a) Money bills can be introduced in the Parliament only with his prior recommendation.

(b) He/she causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).

(c) No demand for a grant can be made except on his recommendation.

(d) He/she can make advances out of the contingency fund of India to meet any unforeseen expenditure.

(e) He/she constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

(a) He/she appoints the Chief Justice and the judges of Supreme Court and high courts.

(b) He/she can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

(c) He/she can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:
  (i) In all cases where the punishment or sentence is by a court martial;
  (ii) In all cases where the punishment or sentence is for an offence against a Union law; and
  (iii) In all cases where the sentence is a sentence of death.

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He/she represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Thus, the President has the veto power over the bills passed by the Parliament[9], that is, he/she can withhold his/her assent to the bills. The object of conferring this power on the President is two-fold—(a) to prevent hasty and ill-considered legislation by the Parliament; and (b) to prevent a legislation which may be unconstitutional.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto, that is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be overridden by the legislature with an ordinary majority.
4. Pocket veto, that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with three—absolute veto, suspensive veto and pocket veto. There is no qualified veto in the case of Indian President; it is possessed by the American President. The three vetos of the President of India are explained below:

Absolute Veto

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

(a) With respect to private members' bills (ie, bills introduced by any member of Parliament who is not a minister); and
(b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

In 1954, President Dr. Rajendra Prasad withheld his assent to the PEPSU Appropriation Bill. The bill was passed by the Parliament when the President's Rule was in operation in the state of PEPSU[10]. But, when the bill was presented to the President for his assent, the President's Rule was revoked.

Again in 1991, President R Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. The bill was passed by the Parliament (on the last day before dissolution of Lok Sabha) without obtaining the previous recommendation of the President.

Suspensive Veto

The President exercises this veto when he/she returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. This means that the presidential veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required in USA).

As mentioned earlier, the President does not possess this veto in the case of money bills. The President can either give his/her assent to a money bill or withhold his/her assent to a money bill but cannot return it for the reconsideration of the Parliament. Normally, the President gives his/her assent to a money bill as it is introduced in the Parliament with his/her previous permission.

Pocket Veto

In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto. The President can

[9]'Veto' is a Latin word that connotes 'forbid'.

[10]The Patiala and East Punjab States Union (PEPSU) was merged into the Punjab State in 1956.

exercise this veto power as the Constitution does not prescribe any time-limit within which he/she has to take the decision with respect to a bill presented to him/her for his/her assent. In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the pocket of the Indian President is bigger than that of the American President.

In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restrictions on the freedom of press and hence, was widely criticised. After three years, in 1989, the next President R Venkataraman sent the bill back for reconsideration, but the new National Front Government decided to drop the bill.

It should be noted here that the President has no veto power in respect of a constitutional amendment bill. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

Presidential Veto over State Legislation

The President has veto power with respect to state legislation also. A bill passed by a state legislature can become an act only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).

When a bill, passed by a state legislature, is presented to the governor for his/her assent, he/she has four alternatives (under Article 200 of the Constitution):

1. He/she may give his/her assent to the bill, or
2. He/she may withhold his/her assent to the bill, or
3. He/she may return the bill (if it is not a money bill) for reconsideration of the state legislature, or
4. He/she may reserve the bill for the consideration of the President.

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

1. He/she may give his/her assent to the bill, or
2. He/she may withhold his/her assent to the bill, or
3. He/she may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his/her assent, the President is not bound to give his/her assent to the bill. This means that the state legislature cannot override the veto power of the President. Further, the Constitution has not prescribed any time limit within which the President has to take decision with regard to a bill reserved by the governor for his/her consideration. Hence, the President can exercise pocket veto in respect of state legislation also.

Table 18.2 summarises the discussion on the veto power of the President with regard to Central as well as state legislation.

Table 18.2 Veto Power of the President at a Glance

Central Legislation	State Legislation
With Regard to Ordinary Bills	
1. Can be ratified	1. Can be ratified
2. Can be rejected	2. Can be rejected
3. Can be returned	3. Can be returned

Central Legislation	State Legislation
With Regard to Money Bills	
1. Can be ratified	1. Can be ratified
2. Can be rejected (but cannot be returned)	2. Can be rejected (but cannot be returned)
With Regard to Constitutional Amendment Bills	
Can only be ratified (that is, cannot be rejected or returned)	Constitutional amendment bills cannot be introduced in the state legislature.

ORDINANCE-MAKING POWER OF THE PRESIDENT

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

The ordinance-making power is the most important legislative power of the President. It has been vested in him/her to deal with unforeseen or urgent matters. But, the exercise of this power is subject to the following four limitations:

1. He/she can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.
2. He/she can make an ordinance only when he/she is satisfied that the circumstances exist that render it necessary for him/her to take immediate action. In the *Cooper* case[11], (1970), the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide. This means that the decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament. The 38th Constitutional Amendment Act of 1975 made the President's satisfaction final and conclusive and beyond judicial review. But, this provision was deleted by the 44th Constitutional Amendment Act of 1978. Thus, the President's satisfaction is justiciable on the ground of malafide.
3. His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:
   (a) An ordinance can be issued only on those subjects on which the Parliament can make laws.
   (b) An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights[12].
4. Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act. If Parliament takes no action at

[11] *Cooper* vs. *Union of India* (1970).

[12] The definition of 'law' contained in Article 13 expressly includes ordinances.

all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it. If the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks is calculated from the later of those dates. This means that the maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament). If an ordinance is allowed to lapse without being placed before Parliament, then the acts done and completed under it, before it ceases to operate, remain fully valid and effective.

The President can also withdraw an ordinance at any time. However, his/her power of ordinance-making is not a discretionary power, and he/she can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the Prime Minister.

An ordinance like any other legislation, can be retrospective, that is, it may come into force from a back date. It may modify or repeal any act of Parliament or another ordinance. It can alter or amend a tax law also. However, it cannot be issued to amend the Constitution.

The ordinance-making power of the President in India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA, and UK. In justification of the ordinance-making power of the President, Dr. B.R. Ambedkar said in the Constituent Assembly that the mechanism of issuing an ordinance has been devised in order to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session[13]. It must be clarified here that the ordinance-making power of the President has no necessary connection with the national emergency envisaged in Article 352. The President can issue an ordinance even when there is no war or external aggression or armed rebellion.

The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation by ordinance should also be placed before the House.

The Supreme Court's judgement relating to the ordinance-making power of the Governor in the *D.C. Wadhwa* case[14] (1986) is worth mentioning here. In that case, the court pointed out that between 1967–1981, the Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years by repromulgation from time to time. The court ruled that successive repromulgation of ordinances with the same text without any attempt to get the bills passed by the assembly would amount to violation of the Constitution and the ordinance so repromulgated is liable to be struck down. It held that the exceptional power of law-making through ordinance cannot be used as a substitute for the legislative power of the state legislature.

PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

1. Punishment or sentence is for an offence against a Union Law;
2. Punishment or sentence is by a court martial (military court); and
3. Sentence is a sentence of death.

The pardoning power of the President is independent of the Judiciary. The President while exercising this power, does not sit as a court of appeal. The object of conferring this judicial power on the President is two-fold: (a) to keep the door open for correcting any judicial errors in the operation of law; and,

[13] *Constituent Assembly Debates,* Volume VIII, p. 213.

[14] *D.C. Wadhwa* vs. *State of Bihar* (1986).

(b) to afford relief from a sentence, which the President regards as unduly harsh.

The pardoning power of the President includes the following:

1. Pardon It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

2. Commutation It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

3. Remission It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

4. Respite It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

5. Reprieve It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law. But, the pardoning power of the governor differs from that of the President in following two respects:

1. The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.
2. The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence. In other words, both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

In *Kehar Singh* case[14a] (1988), the Supreme Court examined the pardoning power of the President and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the President.
2. The President can examine the evidence afresh and take a view different from the view taken by the court.
3. The power is to be exercised by the President on the advice of the union cabinet.
4. There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President.
5. The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, *mala fide* or discriminatory.

CONSTITUTIONAL POSITION OF THE PRESIDENT

The Constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the prime minister. In other words, the President has to exercise his/her powers and functions with the aid and advise of the council of ministers headed by the Prime Minister.

Dr. B.R. Ambedkar summed up the true position of the President in the following way[15]:

"In the Indian Constitution, there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of the functionary reminds of the President of the United States. But beyond the identity of names, there is nothing in

[14a] *Kehar Singh* vs. *Union of India* (1988).
[15] *Constituent Assembly Debates,* Volume VII, pp. 32–34.

common between the form of government prevalent in America and the form of government adopted under the Indian Constitution. The American form of government is called the presidential system of government and what the Indian Constitution adopted is the Parliamentary system. Under the presidential system of America, the President is the Chief head of the Executive and administration is vested in him. Under the Indian Constitution, the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His place in administration is that of a ceremonial device or a seal by which the nation's decisions are made known. He is generally bound by the advice of his ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any secretary at any time. The President of the Indian Union has no power to do so, so long as his ministers command a majority in Parliament".

In estimating the constitutional position of the President, particular reference has to be made to the provisions of Articles 53, 74 and 75. These are:

1. The executive power of the Union shall be vested in President and shall be exercised by him/her either directly or through officers subordinate to him/her in accordance with this Constitution (Article 53).
2. There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who 'shall', in the exercise of his/her functions, act in accordance with such advice (Article 74).
3. The council of ministers shall be collectively responsible to the Lok Sabha (Article 75). This provision is the foundation of the parliamentary system of government.

The 42nd Constitutional Amendment Act of 1976 (enacted by the Indira Gandhi Government) made the President bound by the advice of the council of ministers headed by the Prime Minister[16]. The 44th Constitutional Amendment Act of 1978 (enacted by the Janata Party Government headed by Morarji Desai) authorised the President to require the council of ministers to reconsider such advice either generally or otherwise. However, he/she 'shall' act in accordance with the advice tendered after such reconsideration. In other words, the President may return a matter once for reconsideration of his/her ministers, but the reconsidered advice shall be binding.

In October 1997, the cabinet recommended President K.R. Narayanan to impose President's Rule (under Article 356) in Uttar Pradesh. The President returned the matter for the reconsideration of the cabinet, which then decided not to move ahead in the matter. Hence, the BJP-led government under Kalyan Singh was saved. Again in September 1998, the President KR Narayanan returned a recommendation of the cabinet that sought the imposition of the President's Rule in Bihar. After a couple of months, the cabinet re-advised the same. It was only then that the President's Rule was imposed in Bihar, in February 1999.

Though the President has no constitutional discretion, he/she has some situational discretion. In other words, the President can act on his/her discretion (that is, without the advice of the ministers) under the following situations:

(i) Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.
(ii) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.
(iii) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

[16]In the original Constitution, there was no such specific provision in Article 74.

Table 18.3 Articles Related to President at a Glance

Article No.	Subject-matter
52.	The President of India
53.	Executive power of the Union
54.	Election of President
55.	Manner of election of President
56.	Term of office of President
57.	Eligibility for re-election
58.	Qualifications for election as President
59.	Conditions of President's office
60.	Oath or affirmation by the President
61.	Procedure for impeachment of the President
62.	Time of holding election to fill vacancy in the office of President
65.	Vice-President to act as President or to discharge his functions
71.	Matters relating to the election of President
72.	Power of President to grant pardons etc., and to suspend, remit or commute sentences in certain cases
74.	Council of ministers to aid and advise the President
75.	Other provisions as to ministers like appointment, term, salaries, etc.
76.	Attorney-General of India
77.	Conduct of business of the Government of India
78.	Duties of Prime Minister in respect to furnishing of information to the President, etc.
85.	Sessions of Parliament, prorogation and dissolution
111.	Assent to bills passed by the Parliament
112.	Union Budget (annual financial statement)
123.	Power of President to promulgate ordinances
143.	Power of President to consult Supreme Court

Table 18.4 Presidential Election, 2022 (Value of Votes of elected MLAs and MPs)[17]

Sl. No.	NAME OF STATE/ UNION TERRITORY	NUMBER OF ASSEMBLY SEATS (ELECTIVE)	POPULATION (1971 CENSUS)	VALUE OF VOTE OF EACH M.L.A.	TOTAL VALUE OF VOTES FOR THE STATE
1	ANDHRA PRADESH	175	27800586	159	159 × 175 = 27825
2	ARUNACHAL PRADESH	60	467511	8	008 × 060 = 480
3	ASSAM	126	14625152	116	116 × 126 = 14616
4	BIHAR	243	42126236	173	173 × 243 = 42039
5	CHHATTISGARH	90	11637494	129	129 × 090 = 11610
6	GOA	40	795120	20	020 × 040 = 800

(Contd.)

[17]This information is obtained from the official website of the Election Commission of India.

Sl. No.	NAME OF STATE/ UNION TERRITORY	NUMBER OF ASSEMBLY SEATS (ELECTIVE)	POPULATION (1971 CENSUS)	VALUE OF VOTE OF EACH M.L.A.	TOTAL VALUE OF VOTES FOR THE STATE
7	GUJARAT	182	26697475	147	147 × 182 = 26754
8	HARYANA	90	10036808	112	112 × 090 = 10080
9	HIMACHAL PRADESH	68	3460434	51	051 × 068 = 3468
10	JHARKHAND	81	14227133	176	176 × 081 = 14256
11	KARNATAKA	224	29299014	131	131 × 224 = 29344
12	KERALA	140	21347375	152	152 × 140 = 21280
13	MADHYA PRADESH	230	30016625	131	131 × 230 = 30130
14	MAHARASHTRA	288	50412235	175	178 × 288 = 50400
15	MANIPUR	60	1072753	18	018 × 060 = 1080
16	MEGHALAYA	60	1011699	17	017 × 060 = 1020
17	MIZORAM	40	332390	8	008 × 040 = 320
18	NAGALAND	60	516449	9	009 × 060 = 540
19	ODISHA	147	21944615	149	149 × 147 = 21903
20	PUNJAB	117	13551060	116	116 × 117 = 13572
21	RAJASTHAN	200	25765806	129	129 × 200 = 25800
22	SIKKIM	32	209843	7	007 × 032 = 224
23	TAMIL NADU	234	41199168	176	176 × 234 = 41184
24	TELANGANA	119	15702122	132	132 × 119 = 15708
25	TRIPURA	60	1556342	26	026 × 060 = 1560
26	UTTARAKHAND	70	4491239	64	064 × 070 = 4480
27	UTTAR PRADESH	403	83849905	208	208 × 403 = 83824
28	WEST BENGAL	294	44312011	151	151 × 294 = 44394
29	NCT OF DELHI	70	4065698	58	058 × 070 = 4060
30	UT OF PUDUCHERRY	30	471707	16	016 × 030 = 480
	TOTAL	**4033**	**543002005**		**= 543231**

(A) VALUE OF EACH VOTE OF MEMBERS OF PARLIAMENT:
TOTAL MEMBERS –
LOK SABHA (543) + RAJYA SABHA (233) = 776

$$\text{VALUE OF EACH VOTE} = \frac{5,43,231}{776} = 700$$

(B) TOTAL VALUE OF VOTES OF
776 MEMBERS OF PARLIAMENT = 700 × 776 = 5,43,200

(C) TOTAL ELECTORS FOR THE
PRESIDENT ELECTION = MLAs (4033) + M.Ps (776) = 4809

(D) TOTAL VALUE OF VOTES OF 4809 ELECTORS FOR
THE PRESIDENTIAL ELECTION 2022 = 5,43,231 + 5,43,200 = 10,86,431

CHAPTER 19 Vice-President

The Vice-President occupies the second highest office in the country. He/she is accorded a rank next to the President in the official warrant of precedence. This office is modelled on the lines of the American Vice-President.

ELECTION

The Vice-President, like the President, is elected not directly by the people but by the method of indirect election. He/she is elected by the members of an electoral college consisting of the members of both Houses of Parliament.[1] Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included). Explaining the reason for this difference, Dr. B.R. Ambedkar observed:[2]

> "The President is the head of the State and his/her power extends both to the administration by the Centre as well as to the states. Consequently, it is necessary that in his/her election, not only members of Parliament should play their part, but the members of the state legislatures should have a voice. But, when we come to the Vice-President, his/her normal functions are to preside over the council of states. It is only on a rare occasion, and that too for a temporary period, that he/she may be called upon to assume the duties of the president. That being so, it does not seem necessary that the members of the state legislatures should also be invited to take part in the election of the Vice-President".

But, the manner of election is same in both the cases. Thus, the Vice-President's election, like that of the President's election, is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.

All doubts and disputes in connection with election of the Vice-President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as Vice-President cannot be challenged on the ground that the electoral college was incomplete (i.e., existence of any vacancy among the members of electoral college). If the election of a person as Vice-President is declared void by the Supreme Court, acts done by him/her before the date of such declaration of the Supreme Court are not invalidated (i.e., they continue to remain in force).

The various vice-presidential elections held so far are summarised in Table 19.1.

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[1] The original Constitution provided that the Vice-President would be elected by the two Houses of Parliament assembled at a joint meeting. This cumbersome procedure was done away by the 11th Constitutional Amendment Act of 1961.

[2] *Constituent Assembly Debates,* Volume VII, p. 1001.

Table 19.1 Elections of the Vice-Presidents (1952–till now)

Sl. No.	Election Year	Victorious Candidate	No. of Votes secured	Runner-up Candidate	No. of Votes secured
1.	1952	Dr. S. Radhakrishnan	—	Unopposed	—
2.	1957	Dr. S. Radhakrishnan	—	Unopposed	—
3.	1962	Dr. Zakir Hussain	568	N. Samant Singh	14
4.	1967	V.V. Giri	486	Prof. Habib	192
5.	1969	G.S. Pathak	400	H.V. Kamath	156
6.	1974	B.D. Jatti	521	N.E. Horo	141
7.	1979	M. Hidayatullah	—	Unopposed	—
8.	1984	R. Venkataraman	508	B.C. Kambley	207
9.	1987	Dr. Shankar Dayal Sharma	—	Unopposed	—
10.	1992	K.R. Narayanan	700	Kaka Joginder Singh	01
11.	1997	Krishna Kant	441	Surjeet Singh Barnala	273
12.	2002	B.S. Shekhawat	454	Shushil Kumar Shinde	305
13.	2007	Mohd. Hamid Ansari	455	Najma Heptullah	222
14.	2012	Mohd. Hamid Ansari	490	Jaswant Singh	238
15.	2017	Venkaiah Naidu	516	Gopal Krishna Gandhi	244
16.	2022	Jagdeep Dhankar	528	Margaret Alva	182

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications

To be eligible for election as Vice-President, a person should fulfil the following qualifications:

1. He/she should be a citizen of India.
2. He/she should have completed 35 years of age.
3. He/she should be qualified for election as a member of the Rajya Sabha.
4. He/she should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

But, a sitting President or Vice-President of the Union, the governor of any state and a minister for the Union or any state is not deemed to hold any office of profit and hence qualified for being a candidate for Vice-President.

Further, the nomination of a candidate for election to the office of Vice-President must be subscribed by at least 20 electors as proposers and 20 electors as seconders. Every candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India.[3]

Oath or Affirmation

Before entering upon his/her office, the Vice-President has to make and subscribe to an oath or affirmation. In his/her oath, the Vice-President swears:

1. To bear true faith and allegiance to the Constitution of India; and
2. To faithfully discharge the duties of his/her office.

[3]Presidential and Vice-Presidential Elections Act, 1952 as amended in 1997.

The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him/her.

Conditions of Office

The Constitution lays down the following two conditions of the Vice-President's office:

1. He/she should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as the Vice-President, he/she is deemed to have vacated the seat in that House on the date on which he/she enters upon the office as Vice-President.
2. He/she should not hold any other office of profit.

TERM AND VACANCY

Term of Office

The Vice-President holds office for a term of five years from the date on which he/she enters upon his/her office. However, he/she can resign from his/her office at any time by addressing the resignation letter to the President. He/she can also be removed from the office before completion of his/her term. A formal impeachment is not required for his/her removal. He/she can be removed by a resolution passed by a majority of all the then members of the Rajya Sabha and agreed to by the Lok Sabha. This means that this resolution should be passed in the Rajya Sabha by an effective majority and in the Lok Sabha by a simple majority. Further, this resolution can be introduced only in the Rajya Sabha and not in the Lok Sabha. But, no such resolution can be moved unless at least 14 days' advance notice has been given. Notably, no ground has been mentioned in the Constitution for his/her removal.

The Vice-President can hold office beyond his/her term of five years until his/her successor assumes charge. He/she is also eligible for re-election to that office. He/she may be elected for any number of terms.[4]

[4]Dr. S. Radhakrishnan was elected for a second term.

Vacancy in Office

A vacancy in the Vice-President's office can occur in any of the following ways:

1. On the expiry of his/her tenure of five years
2. By his/her resignation
3. On his/her removal
4. By his/her death[5]
5. Otherwise, for example, when he/she becomes disqualified to hold office or when his/her election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting vice-president, an election to fill the vacancy must be held before the expiration of the term.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy. The newly-elected vice-president remains in office for a full term of five years from the date he/she assumes charge of his/her office.

POWERS AND FUNCTIONS

The functions of the Vice-President are two-fold:

1. He/she acts as the *ex-officio* Chairman of Rajya Sabha. In this capacity, his/her powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he/she resembles the American vice-president, who also acts as the Chairman of the Senate—the Upper House of the American legislature.
2. He/she acts as President when a vacancy occurs in the office of the President due to his/her resignation, impeachment, death or otherwise.[6] He/she can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge

[5]Krishna Kant was the first Vice-President to die in office.

[6]When two Presidents, Dr. Zakir Hussain and Fakruddin Ali Ahmed, died in office, the then respective Vice-Presidents, V.V. Giri and B.D. Jatti acted as President.

his/her functions due to absence, illness or any other cause, the Vice-President discharges his/her functions until the President resumes his/her office.[7]

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

The Constitution has not fixed any emoluments for the Vice-President in that capacity. He/she draws his/her regular salary in his/her capacity as the *ex-officio* Chairman of the Rajya Sabha. In 2018, the Parliament increased the salary of the Chairman of the Rajya Sabha from ₹1.25 lakh to ₹4 lakh per month[8]. Earlier in 2008, the pension of the retired Vice-President was increased from ₹20,000 per month to 50% of his/her salary per month[9]. In addition, he/she is entitled to daily allowance, free furnished residence, medical, travel and other facilities.

During any period when the Vice-President acts as President or discharges the functions of the President, he/she is not entitled to the salary or allowance payable to the Chairman of Rajya Sabha, but the salary and allowance of the President.

INDIAN AND AMERICAN VICE-PRESIDENTS COMPARED

Though the office of the Indian Vice-President is modelled on the lines of the American Vice-President, there is a difference. The American Vice-President succeeds to the presidency when it falls vacant, and remains President for the unexpired term of his/her predecessor. The Indian Vice-President, on the other hand, does not assume the office of the President when it falls vacant for the unexpired term. He/she merely serves as an acting President until the new President assumes charge.

It is evident that the Constitution has not assigned any significant function to the Vice-President in that capacity. Hence, some scholars call him/her 'His Superfluous Highness'. This office was created with a view to maintain the political continuity of the Indian State.

[7]The Vice-President, Dr. S. Radhakrishnan discharged the functions of the President in June 1960, when the then President Dr. Rajendra Prasad was on a 15-day tour to the USSR and again in July 1961, when he/she (Dr. Rajendra Prasad) was very ill.

[8]Vide the Finance Act, 2018, with effect from 1st January, 2016. This Act amended the Salaries and Allowances of Officers of Parliament Act, 1953.

[9]The Vice-President's Pension (Amendment) Act, 2008. This Act amended the Vice-President's Pension Act, 1997.

Table 19.2 Articles Related to Vice-President at a Glance

Article No.	Subject-matter
63.	The Vice-President of India
64.	The Vice-President to be ex-officio Chairman of the Council of States
65.	The Vice-President to act as President or to discharge his/her functions during casual vacancies in the office, or during the absence, of President
66.	Election of Vice-President
67.	Term of office of Vice-President
68.	Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy
69.	Oath or affirmation by the Vice-President
70.	Discharge of President's functions in other contingencies
71.	Matters relating to, or connected with, the election of Vice-President

CHAPTER 20 Prime Minister

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive). In other words, President is the head of the State while Prime Minister is the head of the government.

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the President. However, this does not imply that the President is free to appoint any one as the Prime Minister. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his/her personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him/her to seek a vote of confidence in the House within a month. This discretion was exercised by the President, for the first time in 1979, when Neelam Sanjiva Reddy (the then President) appointed Charan Singh (the coalition leader) as the Prime Minister after the fall of the Janata Party government headed by Morarji Desai.

There is also one more situation when the President may have to exercise his/her individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor. This is what happened when Indira Gandhi was assassinated in 1984. The then President Zail Singh appointed Rajiv Gandhi as the Prime Minister by ignoring the precedent of appointing a caretaker Prime Minister.[1] Later on, the Congress parliamentary party unanimously elected him as its leader. However, if, on the death of an incumbent Prime Minister, the ruling party elects a new leader, the President has no choice but to appoint him/her as Prime Minister.

In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his/her majority in the Lok Sabha before he/she is appointed as the Prime Minister. The President may first appoint him/her as the Prime Minister and then ask him/her to prove his majority in the Lok Sabha within a reasonable period. For example, Charan Singh (1979), V.P. Singh (1989), Chandrasekhar (1990),

[1] On the death of Jawaharlal Nehru and Lal Bahadur Shastri when the leadership was contested, the President made temporary arrangements by appointing the seniormost minister as the Prime Minister, until the formal election of the leader by the party. Both the times, it was Gulzari Lal Nanda who acted as the Prime Minister.

P.V. Narasimha Rao (1991), A.B. Vajyapee (1996), Deve Gowda (1996), I.K. Gujral (1997) and again A.B. Vajpayee (1998) were appointed as Prime Ministers in this way.

In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he/she should become a member of either House of Parliament; otherwise, he/she ceases to be the Prime Minister.

Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament. For example, three Prime Ministers, Indira Gandhi (1966), Deve Gowda (1996) and Manmohan Singh (2004), were members of the Rajya Sabha. In Britain, on the other hand, the Prime Minister should definitely be a member of the Lower House (House of Commons).

OATH, TERM AND SALARY

Before the Prime Minister enters upon his/her office, the President administers to him/her the oaths of office and secrecy.[2] In his/her oath of office, the Prime Minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his/her office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his/her oath of secrecy, the Prime Minister swears that he/she will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his/her consideration or becomes known to him/her as a Union Minister except as may be required for the due discharge of his/her duties as such minister.

The term of the Prime Minister is not fixed and he/she holds office during the pleasure of the President. However, this does not mean that the President can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he/she cannot be dismissed by the President. However, if he/she loses the confidence of the Lok Sabha, he/she must resign or the President can dismiss him/her.[3]

The salary and allowances of the Prime Minister are determined by the Parliament from time to time[3a]. He/she gets the salary and allowances that are payable to a member of Parliament. Additionally, he/she gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc. In 2001, the Parliament increased the sumptuary allowance from ₹1,500 to ₹3,000 per month[3b].

POWERS AND FUNCTIONS OF THE PRIME MINISTER

The powers and functions of Prime Minister can be studied under the following heads:

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of ministers:

1. He/she recommends persons who can be appointed as ministers by the President. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. He/she allocates and reshuffles various portfolios among the ministers.
3. He/she can ask a minister to resign or advise the President to dismiss him/her in case of difference of opinion.
4. He/she presides over the meeting of council of ministers and influences its decisions.
5. He/she guides, directs, controls, and coordinates the activities of all the ministers.

[2]The form of oath of office and secrecy for the Prime Minister is similar to that for any Union minister.

[3]For example, V.P. Singh in 1990 and Deve Gowda in 1997 resigned after defeat in the Lok Sabha.

[3a]The Salaries and Allowances of Ministers Act, 1952, has been passed for this purpose.

[3b]The Salaries and Allowances of Ministers (Amendment) Act, 2001.

6. He/she can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

1. He/she is the principal channel of communication between the President and the council of ministers.[4] It is the duty of the prime minister:
   (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
   (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
   (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. He/she advises the President with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

[4]Article 78 specifically deals with this function of the Prime Minister.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he/she enjoys the following powers:

1. He/she advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. He/she can recommend dissolution of the Lok Sabha to President at any time.
3. He/she announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

1. He/she is the chairman of the NITI Aayog (which succeeded the planning commission), National Integration Council, Inter-State Council, National Water Resources Council and some other bodies.
2. He/she plays a significant role in shaping the foreign policy of the country.
3. He/she is the chief spokesman of the Union government.
4. He/she is the crisis manager-in-chief at the political level during emergencies.
5. As a leader of the nation, he/she meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
6. He/she is leader of the party in power.
7. He/she is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr. B.R. Ambedkar stated, 'If any functionary under our constitution is to be compared with the US President, he is the Prime Minister and not the President of the Union'.

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of Prime Minister in Britain holds

good in the Indian context also. These are mentioned below:

Lord Morely He described Prime Minister as 'primus inter pares' (first among equals) and 'key stone of the cabinet arch'. He said, "The head of the cabinet is 'primus inter pares', and occupied a position which so long as it lasts, is one of exceptional and peculiar authority".

Herbert Marrison "As the head of the Government, he (prime minister) is 'primus inter pares'. But, it is today for too modest an appreciation of the Prime Minister's position".

Sir William Vernor Harcourt He described Prime Minister as 'inter stellas luna minores' (a moon among lesser stars).

Jennings "He is, rather, a sun around which planets revolve. He is the key-stone of the constitution. All roads in the constitution lead to the Prime Minister."

H.J. Laski On the relationship between the Prime Minister and the cabinet, he said that the Prime Minister "is central to its formation, central to its life, and central to its death". He described him as "the pivot around which the entire governmental machinery revolves."

H.R.G. Greaves "The Government is the master of the country and he (Prime Minister) is the master of the Government."

Munro He called Prime Minister as "the captain of the ship of the state".

Ramsay Muir He described Prime Minister as "the steersman of steering wheel of the ship of the state."

The role of the Prime Minister in the British parliamentary government is so significant and crucial that observers like to call it a 'Prime Ministerial government.' Thus, R.H. Crossman says, 'The post-war epoch has been the final transformation of cabinet government into Prime Ministerial government.' Similarly, Humphrey Berkely points out, 'Parliament is not, in practice, sovereign. The parliamentary democracy has now collapsed at Westminster. The basic defect in the British system of governing is the super-ministerial powers of the Prime Minister.' The same description holds good to the Indian context too.

RELATIONSHIP WITH THE PRESIDENT

The following provisions of the Constitution deal with the relationship between the President and the Prime Minister:

1. **Article 74** There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his/her functions, act in accordance with such advice. However, the President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

2. **Article 75** (a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister; (b) The ministers shall hold office during the pleasure of the President; and (c) The council of ministers shall be collectively responsible to the House of the People.

3. **Article 78** It shall be the duty of the Prime Minister:

(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
(c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

CHIEF MINISTERS WHO BECAME PRIME MINISTERS

Six people—Morarji Desai, Charan Singh, V.P. Singh, P.V. Narasimha Rao, H.D. Deve Gowda and Narendra Modi—became Prime Ministers after being Chief Ministers of their respective States. Morarji Desai, Chief Minister of the erstwhile Bombay State during 1952–56, became the first non-Congress Prime Minister in March 1977. Charan Singh, who succeeded him, was the Chief Minister of the undivided Uttar Pradesh in 1967–1968 and again in 1970. V.P. Singh, also from U.P., became Prime Minister in the short lived National Front government (December 1989–November 1990). P.V. Narasimha Rao, the first Prime Minister from South India, who held the post from 1991–1996, was Chief Minister of Andhra Pradesh between 1971–1973. H.D. Deve Gowda was Chief Minister of Karnataka when he was chosen to lead the United Front government in June 1996[5].

Narendra Modi (BJP) was the Chief Minister of Gujarat when he became the Prime Minister in May 2014. He served as the Chief Minister of Gujarat for four times during 2001 to 2014.

CARETAKER GOVERNMENT

The Constitution of India does not contain any provision for a caretaker government. It is only a situational arrangement and a functional necessity.

Meaning

The following points clearly doing out the meaning of a caretaker government:

1. The creation of a caretaker government after the dissolution of the popular chamber of the Parliament and its termination with the induction of a new ministry after the general election is an essential feature of the parliamentary system of government in operation. Such a government is enjoined upon to hold free and fair polls so that a new popular government comes into being[6].
2. The term (caretaker government) has come to be used in common parlance to describe the status of a council of ministers that has resigned on having lost the confidence of the Lok Sabha or otherwise but is asked by the President to continue till alternative arrangements are made. If an alternative government cannot be formed immediately and general elections have to be held, the outgoing council of ministers may have to hold charge till the conclusion of elections and formation of new government[7].

Limited Role

Unlike a regular government, a caretaker government is meant for only managing the routine activities of the government. Hence, it is not expected to make any significant policy decisions or initiate new measures and schemes except those relating to national security or national interest.

The following comments and observations highlight the limited role of a caretaker government in the governance of the country:

1. The Tarkunde Committee (1974–75) recommended that a caretaker government should not: (i) initiate and announce new policies, (ii) promise or start new projects, (iii) grant allowances or loans, salary increases, and (iv) hold official functions attended by ministers[8].

[5]The Hindu, April 6, 2009.

[6]J.C. Johari, Indian Government and Policies, Vishal Publications, Volume II, Thirteenth Edition, 2001, p. 729.

[7]Subhash C. Kashyap, Our Constitution, National Book Trust, Fifth Edition, 2011, p. 203.

[8]This committee on electoral reforms was appointed in 1974 by Jayaprakash Narayan (JP) during his "Total Revolution" movement. It was headed by Justice Vithal Mahadeo Tarkunde. This unofficial committee submitted its report in 1975. It was also known as J P Committee.

2. In August 1979, the then President N. Sanjeeva Reddy, while dissolving the Lok Sabha, issued a communique stating that the President had consultations with the Prime Minister and some of his cabinet colleagues who assured that:
   (i) Elections will be peaceful, free and fair. The revision of the electoral rolls will begin immediately and the election time-table will commence in November 1979 and will be completed by December 1979.
   (ii) The Government will not take decisions during this period which set new policies or involve new spending of a significant order or constitute measures of administrative or executive decisions. However, work of an urgent nature involving the national interest will not be held up.
3. The Calcutta High Court in a judgement delivered in December 1979 observed that there is no mention of a caretaker government as such in our constitution, but such an extraordinary situation calls for a caretaker government and, therefore, the Prime Minister and the Council of Ministers can, in such a situation only carry on day-to-day administration in office, which are necessary for carrying on for the sake of making an alternative arrangement.
4. The caretaker Prime Ministers are constrained for two reasons: first, the normal channel of accountability through Parliament does not exist; second, the government does not abuse its position to gain electoral advantage[9].

[9]Rajeev Dhavan, Caretaker Despotism: Is the President Meddling? The Sunday Times of India, New Delhi, August 15, 1999, p. 16.

Table 20.1 Articles Related to Prime Minister at a Glance

Article No.	Subject Matter
74.	Council of Ministers to aid and advise President
75.	Other provisions as to Ministers
77.	Conduct of business of the Government of India
78.	Duties of Prime Minister as respects the furnishing of information to the President, etc.
88.	Rights of Ministers as respects the Houses

CHAPTER 21 Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority is our politico-administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

CONSTITUTIONAL PROVISIONS

Article 74—Council of Ministers to aid and advise President

1. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his/her functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
2. The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75—Other Provisions as to Ministers

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
2. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91st Amendment Act of 2003.
3. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
4. The ministers shall hold office during the pleasure of the President.
5. The council of ministers shall be collectively responsible to the Lok Sabha.
6. The President shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
8. The salaries and allowances of ministers shall be determined by the Parliament.

Article 77—Conduct of Business of the Government of India

1. All executive action of the Government of India shall be expressed to be taken in the name of the President.
2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner

as may be specified in rules to be made by the President. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

3. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 78—Duties of Prime Minister

It shall be the duty of the Prime Minister

1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
2. To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for
3. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Article 88—Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he/she may be named a member. But he/she shall not be entitled to vote.

NATURE OF ADVICE BY MINISTERS

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his/her functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.[1] Further, the nature of advice tendered by ministers to the President cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the President and the ministers.

In U.N.R. Rao case[1a] (1971), the Supreme Court held that "even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office. Article 74 is mandatory and, therefore, the President cannot exercise the executive power without the aid and advise of the council of ministers. Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74". Again in Shamsher Singh case[1b] (1974), the court held that "wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his/her powers and functions".

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed

[1]This Article was amended by the 42nd Constitutional Amendment Act of 1976 to the effect that the president shall, in the exercise of his functions, act in accordance with the advice rendered by the council of ministers. The 44th Constitutional Amendment Act of 1978 further added a proviso to this article to the effect that the president may require the council of ministers to reconsider such advice and the president shall act in accordance with the advice tendered after such reconsideration.

[1a]*U.N.R. Rao* vs. *Indira Gandhi* (1971).

[1b]*Shamsher Singh* vs. *State of Punjab* (1974).

as a minister. But, within six months, he/she must become a member (either by election or by nomination) of either House of Parliament, otherwise, he/she ceases to be a minister.

A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he/she can vote only in the House of which he/she is a member.

OATH AND SALARY OF MINISTERS

Before a minister enters upon his/her office, the President administers to him/her the oaths of office and secrecy. In his/her oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his/her office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his/her oath of secrecy, the minister swears that he/she will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his/her consideration or becomes known to him/her as a Union minister except as may be required for the due discharge of his/her duties as such minister.

In 1990, the oath by Devi Lal as deputy prime minister was challenged as being unconstitutional as the Constitution provides only for the Prime Minister and ministers. The Supreme Court upheld the oath as valid and stated that describing a person as Deputy Prime Minister is descriptive only and such description does not confer on him/her any powers of Prime Minister. It ruled that the description of a minister as Deputy Prime Minister or any other type of minister such as minister of state or deputy minister of which there is no mention in the Constitution does not vitiate the oath taken by him/her so long as the substantive part of the oath is correct.

The salaries and allowances of ministers are determined by Parliament from time to time.[2] A minister gets the salary and allowances that are payable to a member of Parliament. Additionally, he/she gets a sumptuary allowance (according to his/her rank), free accommodation, travelling allowance, medical facilities, etc. In 2001, the sumptuary allowance for the prime minister was raised from ₹1,500 to ₹3,000 per month, for a cabinet minister from ₹1,000 to ₹2,000 per month, for a minister of state from ₹500 to ₹1,000 per month and for a deputy minister from ₹300 to ₹600 per month[2a].

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of ommission and commission. They work as a team and swim or sink together. When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha.[3] Alternatively, the council of ministers can advise the President to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

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[2]The Salaries and Allowances of Ministers Act, 1952, has been passed for this purpose.

[2a]The Salaries and Allowances of Ministers (Amendment) Act, 2001.

[3]Each minister need not resign separately; the resignation of the prime minister amounts to the resignation of the entire council of ministers.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If any minister disagrees with a cabinet decision and is not prepared to defend it, he/she must resign. Several ministers have resigned in the past owing to their differences with the cabinet. For example, Dr. B.R. Ambedkar resigned because of his differences with his colleagues on the Hindu Code Bill in 1953. C.D. Deshmukh resigned due to his differences on the policy of reorganisation of states. Arif Mohammed resigned due to his opposition to the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the President, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister. In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him/her to resign or advice the President to dismiss him/her. By exercising this power, the Prime Minister can ensure the realisation of the rule of collective responsibility. In this context, Dr. B.R. Ambedkar observed:

> "Collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility."[4]

[4]*Constituent Assembly Debates*, Volume VIII, p. 1160.

No Legal Responsibility

In Britain, every order of the King for any public act is countersigned by a minister. If the order is in violation of any law, the minister would be held responsible and would be liable in the court. The legally accepted phrase in Britain is, "The king can do no wrong." Hence, he/she cannot be sued in any court.

In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the President.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister—the supreme governing authority of the country.

At times, the council of ministers may also include a deputy prime minister. The deputy prime ministers are appointed mostly for political reasons.

The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers. In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the

cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

It must also be mentioned here that there is one more category of ministers, called parliamentary secretaries. But, they are not the members of the council of ministers. They are appointed by the Prime Minister and not by the President[5]. They have no department

[5]Study Report on Parliamentary Secretary, Ministry of Parliamentary Affairs, 1997, p. 3 and p. 9.

Table 21.1 Distinction Between Council of Ministers and Cabinet

Council of ministers	Cabinet
1. It is a wider body.	1. It is a smaller body.
2. It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	2. It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
3. It does not meet, as a body, to transact government business. It has no collective functions.	3. It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.
4. It is vested with all powers but in theory.	4. It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.
5. Its functions are determined by the cabinet.	5. It directs the council of ministers by taking policy decisions which are binding on all ministers.
6. It implements the decisions taken by the cabinet.	6. It supervises the implementation of its decisions by the council of ministers.
7. It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. But, as provided by the 91st Constitutional Amendment Act of 2003, its maximum size should not exceed 15% of the total strength of the Lok Sabha. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances of Ministers Act of 1952 defines a 'minister' as a 'member of the council of ministers, by whatever name called, and includes a deputy minister'.	7. It was inserted in Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain.
8. It is collectively responsible to the Lower House of the Parliament.	8. It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties.

COUNCIL OF MINISTERS VS CABINET

The words 'council of ministers' and 'cabinet' are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role. These differences are shown in Table 21.1.

ROLE OF CABINET

1. It is the highest decision-making authority in our politico-administrative system.
2. It is the chief policy formulating body of the Central government.
3. It is the supreme executive authority of the Central government.
4. It is chief coordinator of Central administration.
5. It is an advisory body to the President and its advice is binding on him/her.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
9. It deals with all foreign policies and foreign affairs.

ROLE DESCRIPTIONS

The various comments made by the eminent political scientists and constitutional experts on the role of cabinet in Britain holds good in the Indian context also. These are mentioned below.

Ramsay Muir "The Cabinet is the steering wheel of the ship of the state."

Lowell "The Cabinet is the keystone of the political arch".

Sir John Marriott "The Cabinet is the pivot around which the whole political machinery revolves".

Gladstone "The Cabinet is the solar orb around which the other bodies revolve".

Barker "The Cabinet is the magnet of policy".

Bagehot "The Cabinet is a hyphen that joins, the buckle that binds the executive and legislative departments together".

Sir Ivor Jennings "The Cabinet is the core of the British Constitutional System. It provides unity to the British system of Government".

L.S. Amery "The Cabinet is the central directing instrument of Government".

The position of the Cabinet in the British Government has become so strong that Ramsay Muir referred to it as the 'Dictatorship of the Cabinet'. In his book '*How Britain is Governed*', he writes "A body which wields such powers as these may fairly be described as 'omnipotent' in theory, however, incapable it may be of using its omnipotence. Its position, whenever it commands a majority, is a dictatorship only qualified by publicity. This dictatorship is far more absolute that it was two generations ago". The same description holds good in the Indian context too.

KITCHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and the cabinet ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the 'Inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the Prime Minister and a few influential colleagues in whom he/she has faithand with whom he/she can discuss every problem. It advises the prime minister on important political and administrative issues and assists him/her in making crucial decisions. It is composed of not only cabinet ministers but also outsiders likefriends and family members of the prime minister.

Every prime minister in India has had his/her 'Inner Cabinet'—a circle within a circle. During the era of Indira Gandhi, the 'Inner Cabinet' which came to be called the 'Kitchen Cabinet' was particularly powerful.

The prime ministers have resorted to the device of 'inner cabinet' (extra-constitutional body) due to its merits, namely:

1. It being a small unit, is much more efficient decision-making body than a large cabinet.
2. It can meet more often and deal with business much more expeditiously than the large cabinet.
3. It helps the Prime Minister in maintaining secrecy in making decisions on important political issues.

However, it has many demerits also. Thus,[6]

1. It reduces the authority and status of the cabinet as the highest decision-making body.
2. It circumvents the legal process by allowing outside persons to play an influential role in the government functioning.

The phenomenon of 'kitchen cabinet' (where decisions are cooked and placed before the cabinet for formal approval) is not unique to India. It also exists in USA and Britain and is quite powerful in influencing government decisions there.

[6]Avasthi and Avasthi, *Indian Administration*, Laksmi Narain Agarwal, First Edition, 1993, p. 79.

Table 21.2 Articles Related to Central Council of Ministers at a Glance

Article No.	Subject Matter
74.	Council of Ministers to aid and advise President
75.	Other provisions as to Ministers
77.	Conduct of business of the Government of India
78.	Duties of Prime Minister as respects the furnishing of information to the President, etc.
88.	Rights of Ministers as respects the Houses